TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 162.

THE MOUNTAIN VIEW MINING AND MILLING COMPANY, APPELLANT,

vs.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, AND W. E. HARRIS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED DECEMBER 1, 1900.

(17,578.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1900.

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1 In the Circuit Court of the United States for the District of Washington, Eastern Division, April Term, 1898.

Be it remembered, that on the 13th day of January, 1897, there was duly filed in said circuit court of the United States for the district of Washington, eastern division, a record from the superior court, State of Washington, for Stevens county, in words and figures as follows, to wit:

STATE OF WASHINGTON, } ss:
County of Stevens, }

In Superior Court.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Complaint.

Now come the plaintiffs in the above-entitled action, and complain of the defendant herein, and allege:

2 1st. That the plaintiffs and each of them are now, and at all times hereinafter mentioned have been, citizens of the United States.

2nd. That the defendant, The Mountain View Mining & Milling Company, is now, and at all times hereinafter mentioned has been, a corporation organized and existing under the laws of the State of Washington, having its principal place of business in the city and county of Spokane, in the State of Washington.

3rd. That the plaintiffs are now the owners of and entitled to the right of possession, and that during all the times since the 20th day of February, 1896, they and the grantor and predecessor in interest of the said C. W. Vedder, have been the owners of and entitled to the right of possession of that certain lode mining claim known as and called the Columbia Lode mining claim, situated on the north side of, and about one and one-quarter miles from, the Columbia river, and about two and one-half miles west of the town of Northport, in the county of Stevens, State of Washington, and being the same ground and premises sometimes called the Gray Eagle lode, said claim being fifteen hundred feet in length along the lode and three hundred feet in width on each side of the center of the vein and lode at the surface throughout the length of said claim, for that heretofore, to wit, on the 20th day of February, 1896, these plaintiffs, W. B. McFadden, David O'Neil, W. E. Harris and one O. E. Cox, the grantor in interest of the plaintiff, C. W. Vedder, each and all being citizens of the United States over the age of twenty-one years,

entered upon the said premises, the same being then and
3 there public lands of the United States open to location as a mineral claim, and vacant, unoccupied, and unclaimed; and then and there discovered therein a vein or lode of rock in place bearing gold, silver and other precious metals; and then and there located a mineral claim thereon, called by them the Columbia Lode mining claim, claiming fifteen hundred feet in length along said lode so discovered, and three hundred feet in width on each side of the center of said vein or lode at the surface throughout the length of said claim.

That thereupon the said locators posted a notice of location upon said claim at the point of discovery of said claim, and described the said location and marked the said location upon the ground, so that the boundaries thereof could be readily traced; and that thereafter, and on the 20th day of February, 1896, the said locators duly filed and caused to be recorded in the office of the county auditor of said county of Stevens a notice of location of said Columbia Lode mining claim, containing the names of said locators, the date of the location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as to identify the same, and that said locators in all other respects complied with the laws of the United States and the laws of the State of Washington, and the local rules and customs of the miners of the district in which said claim was situated, governing the location and manner of recording mineral claims.

That the above-named plaintiff, C. W. Vedder, has succeeded by purchase and regular conveyance to all of the right, title and interest of the said locator, O. E. Cox, in and to the said Columbia
4 Lode mining claim, and that these plaintiffs, W. D. McFadden, David O'Neil, C. W. Vedder and W. E. Harris, and the said grantor of the said C. W. Vedder, have at all times since the location of the said Columbia Lode mining claim as aforesaid, complied with the laws of the United States and of the said State, and the local rules and customs of the miners of said district relative to the said district,— holding and working of mining claims on the public lands of the United States; and that by virtue of said discovery, location, recording and working of said mining claim, and the compliance with the laws of the United States and of the State of Washington, and the local rules and customs of the miners of said district, and the conveyance by said O. E. Cox to the plaintiff, C. W. Vedder, as aforesaid, these plaintiffs are now the owners of said mining claim and the whole thereof, and entitled to the exclusive right and possession thereof, as against all persons.

4th. That the plaintiffs herein are also the owners of and entitled to the right of possession of that certain other lode mining claim known as and called the Kruger Lode mining claim, situated on the north side of and about one and one-quarter miles from the Columbia river, and about two and one-half miles west of the town of Northport, in said county of Stevens, State of Washington, and being east of and adjoining the Columbia Lode mining claim herein described, and being the same premises sometimes called the Exchequer Lode

mining claim, said claim being fifteen hundred feet in length along the vein, and three hundred feet in width on each side of the center of said vein throughout the length of said claim, for that
5 heretofore, to wit, on the 20th day of February, 1896, these plaintiffs, W. D. McFadden, David O'Neil, W. E. Harris, and one O. E. Cox, each and all being citizens of the United States, over the age of twenty-one years, entered upon said premises herein described as the Kruger Lode mining claim, the same being then and there a part of the vacant, unoccupied and unclaimed public lands of the United States open to location and exploration, as mineral claims, and discovered therein a vein or lode of rock in place, bearing gold, silver and other precious metals, and then and there located thereon a mineral claim, claiming fifteen hundred feet in length along said vein or lode, and three hundred feet in width on each side of the center of said vein, or lode, at the surface throughout the length of said claim, and then and there posted at the point of discovery of said claim a notice of location thereof, describing said claim, and then and there marked said location on the ground so that the boundaries thereof could be readily traced; and thereafter, and on the 20th day of February, 1896, the said locators filed and recorded in the office of the county auditor in the said county of Stevens, a notice of location of said Kruger Lode mining claim, containing the names of said locators, the date of said location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as would identify the claim, and fully complied with the laws of the United States and the State of Washington, and the local rules and customs of the miners of the district in which said claim was located, governing the location of mining claims.

6 5th. That the above-named plaintiff, C. W. Vedder, has by purchase and regular conveyance, succeeded to all the right, title and interest of the said locator, O. E. Cox, in and to the said Kruger Lode mining claim, and that those plaintiffs, including the said C. W. Vedder, and his grantor, the said O. E. Cox, have at all times since the location of said Kruger Lode mining claim fully complied with the laws of the United States and of the State of Washington, and the local rules and regulations of the miners of the said district governing the manner of locating, recording and working said mineral claim, necessary to hold the same; and that these plaintiffs are now the lawful owners and holders of said Kruger Lode mining claim and the whole thereof, and entitled to the exclusive right of possession thereof, as against all persons.

6th. That heretofore, to wit, on or about the — day of ——, 1896, the above-named defendant, The Mountain View Mining & Milling Company, without any right whatever, caused a pretended mining claim, called by it the Mountain View mineral claim, to be officially surveyed for patent, being the United States official survey No. 351; and caused such pretended Mountain View mine or vein lode to be so surveyed as to overlap and include and take in the following-described portion of the said Columbia Lode mining claim, the property of these plaintiffs, to wit: Commencing at corner No. 4 of

the official survey of the Mountain View Lode mining claim, survey No. 351, thence running north 37 degrees, east 1,180 feet to the point of intersection with the north side line of the Columbia lode; thence north 65 degrees and 50 minutes, east 90 feet to the northeast corner stake of the Columbia lode;
7 thence south 20 degrees and 30 minutes, east 520 feet, to a point on the southeast side line of said survey No. 351; thence south 29 degrees and 47 minutes and 44 seconds, west 130 feet, to the south side line of said Columbia lode; thence south 61 degrees and 30 minutes, west, along the south side line of the said Columbia lode, 900 feet to the south end line of the said survey No. 351; thence north 65 degrees and 45 minutes west along said end line 110 feet to corner No. 4, of said survey No. 351 and point of beginning, containing an area of 8.79 acres; so also as to include, overlap, and take in the following-described portion of the said Kruger Lode mining claim, the property of the seplaintiffs, to wit: Commencing at corner No. 2 of the official survey of the Mountain View lode, survey No. 351; thence running south 29 degrees and 47 minutes and 44 seconds west 640 feet to the southwest end line of the Kruger lode; thence north 20 degrees and 30 minutes west 520 feet, to the southwest corner of the said Kruger lode; thence north 33 degrees and 20 minutes east 260 feet to the north end line of said survey No. 351; thence south 65 degrees and 45 minutes east 381 feet to the point of beginning, containing an area of 4.42 acres.

7th. That theretofore, to wit, on or about the 20th day of September, 1896, the said defendant, The Mountain View Mining & Milling Company, filed in the United States land office, in the city of Spokane and State of Washington, an application for patent for said alleged Mountain View mining claim, survey No. 351, together with a plat and field-notes of said alleged Mountain View
8 mining claim, made by or under the direction of the United States surveyor general, showing the boundaries of the said alleged Mountain View mining claim; and also posted a copy of said plat, together with a notice of such application for patent, in a conspicuous place on the land embraced in said plat, and also filed in said land office an affidavit of two persons that said notice was duly posted upon said premises, and filed in said land office a copy of said notice; and that thereafter, and on the 1st day of October, 1896, the registrar of said land office published in the "Northport News," a weekly newspaper published nearest said claim, that said application for patent had been made, said notice being first published on the 1st day of October, 1896, and that said notice was published in said newspaper once in each week for ten consecutive weeks thereafter.

8th. That heretofore, to wit, on the 28th day of November, 1896, and within the sixty days' period of publication of said notice, these plaintiffs duly filed with the registrar and receiver of said United States land office, at said city of Spokane and State of Washington, their protest and adverse claim against said application for patent to the Mountain View mining claim, which protest and adverse claim was duly signed and verified by the affidavits of these

plaintiffs, protestants therein, and which said protest and adverse claim duly set forth the nature, boundaries, and extent of their said adverse claim, as required by law; and that these plaintiffs now, within thirty days after filing said protest and adverse claim as aforesaid, bring this suit in aid of their said adverse claim, and to determine the right of possession to said portions of the said
9 Columbia and Kruger Lode mining claims so as aforesaid included in the said survey and application for patent for the said alleged Mountain View mining claim.

9th. Plaintiffs further allege that heretofore, to wit, on or about the 1st day of July, 1886, and while these plaintiffs, W. D. McFadden, David O'Neil, W. E. Harris, and O. E. Cox, the grantor of the plaintiff, C. W. Vedder, were the owners of, and in the quiet and exclusive possession of, and entitled to the right of possession of, the said Columbia and Kruger Lode mining claims as aforesaid, the said defendant, The Mountain View Mining & Milling Company, wrongfully and without right entered into and upon the above-described portions of the said Columbia and Kruger mining claims, so as aforesaid included within the boundaries of the said survey No. 351, and ousted and ejected these plaintiffs, W. D. McFadden, David O'Neil and W. E. Harris, and the said O. E. Cox therefrom; and that the said defendant has at all times since and does now wrongfully and without right withhold the possession thereof from these plaintiffs.

10th. That the said survey of the said pretended Mountain View mining claim was made so as to overlap, include and take in the portions of the said Columbia and Kruger Lode mining claims, as above set forth, and the said application for patent by the defendant, as aforesaid, including the said portions of said Columbia and Kruger Lode mining claims, as aforesaid, and the prosecution of said application for patent, each and all are made without any right whatever, and constitute and are a cloud upon the title
10 and right of possession of these plaintiffs in and to the said portions of the said Columbia and Kruger lodes aforesaid, which cloud greatly embarrasses and damages the title of these plaintiffs in and to their said Columbia and Kruger lodes, and especially the portions thereof included within the said survey No. 351, and which cloud should in law and equity be removed.

Wherefore these plaintiffs pray and demand:

1st. For a judgment and decree of this honorable court adjudging the plaintiffs to be the owners of, and to be entitled to, the right of possession of all and singular those certain portions and parts of the said Columbia and Kruger Lode mining claims respectively, so as aforesaid included within the said application for patent, and within the said survey No. 351 as aforesaid, and to the whole thereof.

2nd. That the defendant's said claim and assertion of title thereto be adjudged to be void and without any right whatever, and that the said survey and application for patent be set aside and held for naught so far as the same in any manner interferes with the said Columbia and Kruger mining claims aforesaid.

3rd. That the plaintiffs have such other and further relief in the

premises as to the court may seem just and equitable, together with the costs of this action.

ALBERT ALLEN,
W. T. STOLL,
Attorneys for Plaintiffs.

P. O. address: Spokane, Wash.

11 STATE OF WASHINGTON, } ss:
County of Spokane, }

Charles W. Vedder being duly sworn, says: That he is one of the plaintiffs in the above-entitled action; that he has heard the foregoing complaint read and knows the contents thereof, and verily believes the same to be true.

CHARLES W. VEDDER.

Subscribed and sworn to before me this 26 day of December, A. D. 1896.

E. H. BELDEN,
Notary Public for Washington, Residing at Spokane, Washington.
[SEAL.]

(Endorsed:) No. 739. In the superior court of Spokane county, Washington. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Co. (a corporation), defendant. Filed Dec. 28, 1896. L. F. Ledgerwood, clerk. 511. Filed January, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

12 THE STATE OF WASHINGTON, } ss:
County of Stevens, }

In the Superior Court.

W. D. MCFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY, Defendants.

Summons.

The State of Washington to the said The Mountain View Mining & Milling Company, defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and serve a copy of your answer on the persons whose names are subscribed to this summons, at Spokane, State of Washington; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint which is filed with
13 the clerk of said court, a copy of which is herewith served upon you.

Dated this 28th day of December, 1896.

ALBERT ALLEN AND
W. T. STOLL,
Attorneys for Plaintiff-.

P. O. address: Spokane, Spokane county, State of Washington.

I, the undersigned, one of plaintiff-' attorneys, hereby certify that the foregoing is a true copy of the original summons issued in the above-entitled action, this — day of ——, 189–.

—— ——,
One of the Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
Spokane County, }

I, John L. Harrington, being first duly sworn, upon oath say that I am and was on the date hereafter stated over the age of twenty-one years, and competent to be a witness in the above-entitled action, not being the plaintiff therein; that on the 28 day of December, 1896, at and in the county and State aforesaid, I served the original summons and complaint in said action upon the defendant The Mountain View Mining & Milling Company, therein named, by then and there delivering to Jacob R. Taylor, president of the defendant corporation, said defendant, personally, true copies of each said summons and said complaint, each and both certified to be such copies by W. T. Stoll, one of the attorneys for plaintiff-.

JOHN L. HARRINGTON.

14 Subscribed and sworn to before me, the undersigned, this 28 day of December, 1896.

S. P. DOMER,
[SEAL.] *Notary Public for Washington, Residing at Spokane.*

(Endorsed:) Case No. 739. Summons. In the superior court, Spokane county, Washington. W. D. McFadden, David O'Neil, Chas. W. Vedder, and W. E. Harris, plaintiffs, *vs.* The Mountain View Mining & Milling Co., defendant. Filed in superior court, Stevens county, Washington, Dec. 29, 1896. L. F. Ledgerwood, county clerk. —— ——, deputy. Filed Jan'y 13, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by James O'Neil, deputy.

15 In the Superior Court of the State of Washington in and for the County of Stevens.

W. D. MCFADDEN, DAVID O'NEIL, CHAS. W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Petition for Removal of Cause.

Petition for removal of cause to the circuit court of the United States in and for the district of Washington, eastern division.

Your petitioner, The Mountain View Mining & Milling Company, respectfully shows to this honorable court:

That it is the defendant in this suit, which is of a civil nature; that the matter and amount in dispute in this case, exclusive of

interest and cost, exceeds the sum and value of two thousand dollars.

That the controversy herein is a suit of a civil nature arising under the Constitution and laws of the United States, brought in pursuance of the provisions of section 2326 of the Revised Statutes of the United States, providing for the filing of adverse claims against the application for patent for mining claims, and the bringing of suits in support of said adverse claims.

That on the 20th day of September, 1896, the defendant, The Mountain View Mining & Milling Company, filed in the
16 United States land office in the city of Spokane, in the State of Washington, its application for patent for the Mountain View Lode mining claim, together with the plat and field-notes of said mining claim made under the direction of the United States surveyor general for the State of Washington, and posted a copy of the said plat, together with a notice of said application for patent, on the land embraced in said plat, and filed in the said land office an affidavit of two persons that the notice was duly posted on said premises, together with a copy of said notice; on the first day of October, 1896, the register of the said land office published in the "Northport News," a weekly newspaper published nearest said claim, notice that said application had been made, said notice being published in said newspaper on the first day of October, 1896, and said notice was published once a week for ten consecutive weeks thereafter.

That on the 28th day of November, 1896, the plaintiffs presented to the register and the receiver of said land office at the city of Spokane, in the State of Washington, certain papers and documents intended as a protest and adverse claim against the application for a patent so made as aforesaid by the defendant, but which said pretended adverse claim did not show the nature, boundaries, and extent of said adverse claim as required by the provisions of section 2326 of the Revised Statutes of the United States, and by the rules 85 and 86 of the General Land Office of the United States governing the entry and patenting of mining claims upon the public domain of the United States, whereupon, by reason of the pretended
17 adverse claim not being in conformity with the laws of the United States and the rules of the General Land Office regulating the filing of adverse claims, said adverse claim was rejected and disallowed by said United States land office at Spokane in the State of Washington, and there is not now nor was there at the time of the filing of the complaint in this action, any adverse claim filed in the said United States land office against the application of the defendant for a patent for the said Mountain View mining lode claim, upon which to base, and in support of which to bring, this action. Yet notwithstanding the fact that there has been no adverse claim filed and allowed against the issuance of the patent to the defendant for the said Mountain View Lode claim, the plaintiffs assuming and pretending in their complaint that they had filed said claim against the application of the defendant for a patent, did on the — day of December, 1896, file with the clerk of the superior

court of Stevens county, in the State of Washington, a complaint wherein they alleged and pretended that the said complaint is filed in support of the said pretended adverse claim, and on the 28th day of December, 1896, the said plaintiffs did make and serve a summons upon the defendant demanding that it appear within twenty days after service thereof and defend said action in said superior court of Stevens county.

That upon the trial of this cause it will be contended by the defendant that this action cannot be maintained for the reason that it is not based upon an adverse claim properly made and filed under the provisions of section 2326 of the Revised Statutes of the
18 United States, for the reason that said adverse claim presented by the plaintiffs in the United States land office, wherein said application for patent for the mining claim of the defendant was pending, was properly refused and rejected by said land office for the reason that the requirements of rule 85 of the rules of the General Land Office of the United States in force at the time of the presentation of said adverse claim was not complied with, in that the said adverse claimants did not present or file with said adverse claim any certified copy of the location notices of either of the claims upon which said adverse claimant relied; and that said adverse claim was properly rejected for the further reason that the said adverse claimant did not comply with rule 86 of said rules of the General Land Office, in that said adverse claimant did not file or offer to file in connection with their said adverse claim a plat made from an actual survey by a United States deputy surveyor, nor did the plat presented contain a certificate of any surveyor or an official certificate thereon of its correctness, or have attached to said plat of survey a certificate and sworn statement by said surveyor, or any surveyor, as to the approximate value of the labor performed or improvements made on the claim by the adverse party or its predecessors in interest, or indicate thereon the position of any shafts, tunnels, or other improvements existing upon the claim of the party opposing the application, showing by which party said improvements were made; while on the other hand the plaintiffs will contend at the trial of this cause that it was not necessary for them in complying with the provisions of section 2326 of the Revised Statutes of the United States to regard the said rules of
19 the General Land Office of the United States requiring that they file with their adverse claim certified copies of their location notices or that they should file with said adverse claim a plat made by a United States mineral surveyor from an actual survey made upon the ground, containing an official certificate by such surveyor as to its correctness, or that it was necessary that said plat should contain a certificate or sworn statement by the surveyor as to the approximate value of the labor performed and improvements made upon the claim by the adverse party or their predecessors in interest, or that said plat should indicate the position of any shafts, tunnels, or other improvements, if any such exist upon the claim of the party opposing the application, or show by which party said improvements were made.

That upon the determination of these questions by the court will depend the right of the plaintiffs to maintain this action.

The defendant alleges that no adverse claim has been filed and allowed against the application for patent made by the defendant for the Mountain View Lode mining claim, and that therefore no suit can be maintained in any court under the provisions of section 2326 of the Revised Statutes of the United States, or under the provisions of any law in support of the said pretended adverse claim of the plaintiffs, and that the said court has no jurisdiction to determine the question of the right of possession of said mining claim, an adjudication of which said title is prayed for in said complaint.

For a second cause of removal your petitioner alleges that
20 this is an action brought under the provisions of section 2326 of the Revised Statutes of the United States, in support of the adverse claim filed in the United States land office in the city of Spokane, State of Washington, by the plaintiffs against the application of the defendant for a patent upon the Mountain View Lode mining claim, situated in Stevens county, in the State of Washington, and involves the right of the defendant to receive a patent from the United States for said mining claim, pursuant to the laws of the United States governing the patenting of mining claims.

And for a further and separate ground of removal from the State court aforesaid to the United States circuit court for the district of Washington, eastern division, your petitioner alleges that this is a controversy arising under the laws of the United States and is a suit brought in support of an adverse claim filed by the plaintiffs in the United States land office at Spokane, in the State of Washington, against the application of the defendant for a United States patent for the Mountain View mining lode claim, situated in the county of Stevens and State of Washington.

That the defendant, the applicant for patent, claims to be the owner of the mining claim applied for by virtue of the location of said mining claim made by the applicant's grantor on the 9th day of October, 1895. And the plaintiffs claim to be the owners of the land and premises included within the Mountain View mining lode claim, the property of the defendant as applied for by virtue of the location thereof on the 20th day of February, 1896, by said plaintiffs and their grantors.

21 At the trial of the cause, plaintiffs will claim that the location made by the defendant's grantor on the said 9th day of October, 1895, was invalid and void for the reason that the location was made upon a portion of the public domain of the United States included within the Colville Indian reservation and not open to the location of mining claims; that the said Colville Indian reservation was created by executive order of the President of the United States on the — day of August, 1872, declaring all of that part of said Stevens county in the State of Washington, lying to the north and west of the Columbia river, to the east of the Okanagan river and south of the international boundary line between the United States and British Columbia, to be and constitute the Colville Indian reservation; and plaintiff will maintain upon the trial

that the lands so proclaimed by executive order as aforesaid were a part of the Colville Indian reservation at the time of the location of the said Mountain View Lode claim by defendant's grantor, and that therefore any location made by defendant's grantor on the 9th day of October, 1895, was void.

The defendant will contend and maintain at the trial of this cause that, by virtue of the act of Congress of July 1st, 1892, entitled "An act to provide for the opening of a part of the Colville reservation in the State of Washington, and for other purposes," the said land and premises upon which said Mountain View Lode claim was located became open and subject to the location of mining claims, and that by reason of the said act of Congress of July 1st, 1892, defendant's grantor, who was a citizen of the United
22 States over the age of twenty-one years and a qualified locator of a mining claim, had a right to locate said Mountain View Lode mining claim, and that the right of the plaintiffs or defendant in this action to recover at the trial thereof will depend upon the interpretation placed upon said act of Congress of July 1st, 1892, by this court.

Therefore your petitioner desires to remove this suit before the trial thereof into the next circuit court of the United States, to be held in the district of Washington, in the eastern division.

And your petitioner offers herewith good and sufficient surety for entering into said circuit court of the United States for the district of Washington, eastern division, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by the said circuit court of the United States, if said court shall hold that said suit was wrongfully and improperly removed thereto.

And your petitioner therefore prays that said surety and said bond may be accepted, and that this suit may be removed into the next circuit court of the United States, to be held in the district of Washington, eastern division, pursuant to the statutes of the United States in such cases made and provided, and that no further proceedings be had herein in this court, and he will ever pray, etc.

MOUNTAIN VIEW MINING AND MILLING COMPANY,
By J. R. TAYLOR, *President, Petitioner.*
W. B. HEYBURN,
Attorney for Petitioner and of Counsel.

23 STATE OF WASHINGTON, } ss:
County of Spokane, }

J. R. Taylor makes oath and says that he is the president of The Mountain View Mining & Milling Company, the defendant in the above-named action, and the petitioner herein; that the foregoing petition is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

J. R. TAYLOR.

Subscribed and sworn to before me this 2nd day of January, 1897.

J. W. BINKLEY,
Notary Public in and for the State of Washington,
[SEAL.] *Residing at Spokane, in Spokane County.*

(Endorsed:) No. 739. In the superior court of the State of Washington in and for the county of Stevens. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Company, defendant. Original petition for removal to U. S. circuit court for district of Washington, eastern division. W. B. Heyburn, attorney for defendant. Filed in superior court, Stevens county, Washington, Jan. 4, 1897. L. F. Ledgerwood. J. B. T., county clerk. Filed Jan. 13, 1897. In the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

24 In the Superior Court of the State of Washington in and for the County of Stevens.

W. D. McFADDEN, DAVID O'NEIL, CHAS. W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Bond for Costs on Removal of Cause.

Bond for costs in the matter of the removal of the above-entitled cause to the circuit court of the United States in and for the district of Washington, eastern division.

Know all men by these presents, that The Mountain View Mining and Milling Company, as principal, and Sam. E. Rigg and A. W. Doland, both of Spokane, Washington, as sureties, are held and firmly bound unto W. D. McFadden, David O'Neil, Chas. W. Vedder, and W. E. Harris in the penal sum of two thousand dollars, for the payment whereof well and truly to be made unto the said W. D. McFadden, David O'Neil, Chas. W. Vedder, and W. E. Harris, their heirs and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Mountain View Mining & Milling Company having petitioned the superior court of Stevens county, in the State of Washington, for the removal of a certain cause therein pending, wherein W. D. McFadden, David
25 O'Neil and Chas. W. Vedder and W. E. Harris are plaintiffs and The Mountain View Mining & Milling Company is defendant, to the circuit court of the United States for the district of Washington, eastern division, now, if the said Mountain View Mining & Milling Company, your petitioner, shall enter in the said court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that

may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 2d day of January, 1897.

MOUNTAIN VIEW MINING & MILLING COMPANY,
By J. R. TAYLOR, *President.* [L. S.]
SAM. E. RIGG. [L. S.]
A. W. DOLAND. [L. S.]

[SEAL.]

STATE OF WASHINGTON, } ss:
County of Spokane, }

Sam. E. Rigg and A. W. Doland, being duly sworn, each for himself, deposes and says: I reside in the city of Spokane, county of Spokane, and State of Washington, and am a freeholder therein; and am worth the sum of two thousand dollars over and above all property exempt from sale on execution.

SAM. E. RIGG.
A. W. DOLAND.

26 Sworn to before me this 2nd day of January, 1897.

J. R. TAYLOR,
Notary Public in and for the State of Washington,
[SEAL.] *Residing in Spokane.*

On this 2nd day of January, 1897, in the city and county of Spokane, Washington, before me, a notary public in and for the State of Washington, personally appeared the above-named Sam. E. Rigg and A. W. Doland, both of whom are to me known, and known to me to be the individuals described in, and who executed, the foregoing instrument, and then and there each of them severally acknowledged that he had executed the foregoing bond.

J. R. TAYLOR,
Notary Public in and for the State of Washington,
[SEAL.] *Residing at Spokane.*

Approved by—
JESSE ARTHUR, *Judge.*

(Endorsed:) No. 739. In the superior court of the State of Washington in and for the county of Stevens. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Company, defendant. Original bond on petition for removal to United States circuit court for district of Washington, eastern division. Filed in the superior court, Stevens county, Washington. W. B. Heyburn, attorney for defendant. Filed in superior court, Stevens
27 county, Washington, Jan. 4, 1897. L. F. Ledgerwood, J. B. T., county clerk. Filed Jan. 13, 1897, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

In the Superior Court of the State of Washington in and for the County of Stevens.

W. D. McFADDEN, DAVID O'NEIL, CHAS. W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Order of Approval of Bond for Removal.

The defendant herein, having, within the time provided by law, filed its petition for removal of this cause to the circuit court of the United States for the district of Washington, eastern division, and it appearing, by said petition and from the complaint herein filed, that the defendant is entitled to a removal of this cause to the said circuit court of the United States for the district of Washington, eastern division; and it further appearing to the court that defendant has offered its bond in the sum of two thousand dollars, with Sam. E. Riggs and A. W. Doland as sureties thereon, and it appearing that said surety is good and sufficient,

28 Now therefore this court does hereby accept said bond and the same is ordered approved.

JESSE ARTHUR, *Judge.*

(Endorsed:) 739. Jour., pg. 250. In the superior court of the State of Washington for the county of Stevens. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Company. Order approv-ng bond for removal. Filed in superior court, Stevens county, Washington, Jan. 4, 1897. L. F. Ledgerwood, county clerk. —— ——, deputy. W. B. Heyburn, attorney for defendant, 309 Hyde block, Spokane, Washington. Filed Jan. 13, 1897, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

And afterward, to wit, on the 14th day of January, 1897, there was duly filed in said court in said cause an answer and plea of defendant, in the words and figures following, to wit:

29 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFadden, David O'Neil, Chas. W. Vedder, and W. E. Harris, Plaintiffs,
vs.
The Mountain View Mining & Milling Company (a Corporation), Defendant.

Answer to Bill of Complaint.

Answer of The Mountain View Mining & Milling Company, the defendant above named, to the bill of complaint of W. D. McFadden, David O'Neil, Charles V. Vedder, and W. E. Harris, the above-named plaintiffs.

In answer to said bill, except paragraph eight thereof, to which the defendant has filed its plea, The Mountain View Mining & Milling Company, the defendant, says as follows:

I.

That as to whether or not the plaintiffs, or each or any of them, are now, or at all times mentioned in the complaint, or at all, have been citizens of the United States, this defendant has not sufficient information upon which to base a belief, and therefore denies the same.

II.

Defendant admits that the said Mountain View Mining & Milling Company is now, and at all times mentioned in the said bill
30 of complaint was, a corporation organized and existing under the laws of the State of Washington, having its principal place of business in the city and county of Spokane, in the State of Washington.

III.

Defendant denies that the plaintiffs are now, or ever were, the owners of, or entitled to the possession of, the mining ground and premises claimed by them in the third paragraph of their said bill of complaint as the Columbia Lode mining claim or as the Grey Eagle Lode mining claim, being fifteen hundred feet along the length of the lode, or any other number of feet along the length of said lode, three hundred feet in width, or any other number of feet in width, on each side of the center of the vein or lode at the surface, throughout the length of the said claim. That as to whether or not on the 20th day of February, 1896, W. D. McFadden, David O'Neil, W. E. Harris and O. E. Cox, or any of them, were citizens of the United States the defendant has not sufficient information upon which to base a belief, and therefore denies the same.

Denies that on the said 20th day of February, 1896, the premises claimed by the said plaintiffs, sometimes as the Columbia and sometimes as the Grey Eagle Lode claim, were a part of the public do-

main open to the location of mineral claim, or vacant or unoccupied or unclaimed; or that the said W. D. McFadden, David O'Neil, W. E. Harris and O. E. Cox, or any of them, on the said 20th day of February, 1896, or at any other time, located a mineral claim thereon called by them the Columbia Lode claim, claiming fifteen hundred feet in length along the said lode and three hun-
31 dred feet in width on each side of the center of said claim or lode at the surface throughout the length of said claim, or that said alleged locators thereupon, or at all, posted a notice of location upon said claim at the point of discovery of said claim describing the same, or marked the said location upon the ground so that the boundaries thereof could be readily traced. Defendant admits that the said alleged locators did on the 20th day of February, 1896, file and cause to be recorded, in the office of the county auditor of said Stevens county, a pretended notice of location of the said pretended Columbia Lode claim, but denies that the said location notice in all respects complied with the laws of the United States or of the State of Washington. Denies that the said pretended location was within the limits of any established mining district, or that there were any local rules or customs of miners governing the location of any mining claim at the point where the said pretended location is claimed to have been made.

That as to whether or not the plaintiff C. W. Vedder has succeeded by purchase or regular conveyance, or at all, to all of the right, title or interest of the said locator O. E. Cox in and to the said Columbia Lode mining claim the defendant has not sufficient information upon which to base a belief, and therefore denies the same.

Defendant denies that the said plaintiffs or any of them have at all times or at any time since the alleged location of the said Columbia Lode mining claim complied with the laws of the United States or of the said State of Washington, or with any local rules or customs of the miners of said district, governing the said district for the
32 holding and working of mining claims upon the public lands of the United States. Denies that by virtue of said alleged discovery, or any discovery, or the location, recording or working of the said alleged mining claim, or a compliance with the laws of the United States, or with the laws of the said State of Washington, or of any local rules or customs of miners of any mining district, or of the alleged conveyance by the said O. E. Cox to the plaintiff C. W. Vedder, that the plaintiffs, or any of them, are now the owners of the said alleged mining claim, or any part thereof, or entitled to the exclusive right of possession thereof as against all persons or this defendant.

IV.

Defendant denies that the plaintiffs, or any of them, are the owners, or entitled to the right of possession, of that certain other lode mining claim known as and called the Kruger Lode mining claim, as described in the fourth paragraph of the plaintiffs' complaint, or that the said plaintiffs, or any of them, are the owners, or entitled to the possession, of the land and premises included within the said

pretended lode claim called the Kruger, either under the name of the Kruger or the Exchequer Lode mining claim, or any other name whatever. That as to whether or not on the 20th day of February, 1896, the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris and one O. E. Cox were citizens of the United States over the age of twenty-one years, this defendant has no information or belief, and therefore denies the same.

33 Denies that on said 20th day of February, 1896, or at any other time, the said alleged locators entered upon the said premises described as the Kruger Lode claim, the same being then and there a part of the vacant and unoccupied public lands of the United States, open to location and exploration as mineral claims, and denies that the said lands and premises were on the 20th day of February, 1896, or at any time after the 16th day of October, 1895, a part of the vacant and unoccupied public mineral lands of the United States, open to exploration and location as a mineral claim. Denies that said alleged locators discovered thereon any vein or ledge of rock in place, bearing gold and silver or other precious metals, or that the said alleged locators then and there, or at all, located thereon a mineral claim, claiming fifteen hundred feet in length along the said alleged lode, and three hundred feet in width on each side of the center of said vein at the surface, throughout the length of said vein, or then and there posted at the point of discovery on said claim, or at any point on said claim, or then and there marked said location on the ground so that the boundaries thereof could be readily traced. Defendant admits that on the 20th day of February, 1896, the said alleged locators filed or caused to be filed and recorded, in the office of the county auditor of the said county of Stevens, a pretended notice of location, of the pretended lode claim called the Kruger, but denies that the said pretended locators fully complied or complied at all with the laws of the United States or of the State of Washington, or with any local rules or customs of miners of any mining district in which the said claim is located governing the location of mining claims.

34 V.

That as to whether or not the plaintiff C. W. Vedder has by purchase or regular conveyance succeeded to all the right or title in the premises of the said O. E. Cox, in and to the said Kruger Lode claim, the defendant has no information upon which to base a belief, and therefore denies the same.

Defendant denies that the plaintiffs, including the said C. W. Vedder and his grantor, the said O. E. Cox, or any of them, have at all times, or at any time since the alleged location of said alleged Kruger Lode mining claim, fully complied with or complied at all with the laws of the United States or of the State of Washington, or with any local rules and regulations of miners in any mining district, governing the location, recording and working of said alleged mineral claim necessary to hold the same, or that plaintiffs are now the lawful owners and holders of the said Kruger Lode claim or of the whole thereof, or any part thereof, or that the plaintiffs are en-

titled to the exclusive right of possession thereof or any right of possession thereof, as against all persons, or as against this defendant.

This defendant admits that on the 20th day of February, 1896, the plaintiffs, or some persons under whom they claim, pretending and claiming that the location of the Mountain View Lode mining claim made by the defendant's grantor as hereinafter set forth was void and illegal for the reason that at the time when said Mountain View mining claim was located as hereinafter set forth, the land and premises included in said location was not open to the
35 location of mining claims for the reason that the same was within the limits and boundaries of the Colville reservation as set aside by executive order of the President of the United States on August 9th, 1872, and further claiming and pretending that the act of Congress of July 1st, 1892, entitled "An act to provide for the opening of a part of the Colville reservation in the State of Washington, and for other purposes," did not open that portion of the said reservation by said act declared to be restored to the public domain, to the location of mining claims under the laws of the United States regulating the location of mining claims, and further contending and maintaining that the said land and premises located as the Mountain View mining claim by the defendant's grantor which is situated within that portion of the said Colville Indian reservation declared by said act of July 1st, 1892, to be restored to public domain, did not become open and subject to the location mining claims until after the passage of the act of Congress of February 20th, 1896, especially declaring the said portion of the said Indian reservation subject to the operation of the mining laws of the United States, during the temporary absence of the defendant's grantor entered into and upon the said Mountain View mining claim and pretended to locate a mining claim called the Kruger, and another mining claim called the Columbia, and another mining claim called the Exchequer, and another mining claim called the Grey Eagle, overlapping and conflicting with the said Mountain View Lode mining claim, but defendant alleges and contends that said locations of the Kruger, Columbia, Exchequer and
36 Grey Eagle Lode claims, by the plaintiffs and their grantors, were illegal and void, for the reason that the land and premises attempted to be located by said locations were not a part of the public mineral lands of the United States, open to exploration and purchase, at the time of the alleged location of said claims by plaintiffs and their grantors, by reason of the fact that the said premises had already been located and claimed by the valid location of the Mountain View Lode mining claim, so made by defendant's grantor, Charles N. Collins, as hereinafter set forth.

Defendant admits that heretofore, on the 22nd day of September, 1896, the Mountain View Mining & Milling Company made, or caused to be made, an official survey of the Mountain View mining claim for patent, said survey being United States official survey No. 351, but denies that the said survey was without right, or that it overlapped or included or took in any portion of the said alleged

Columbia Lode mining claim, the alleged property of the plaintiffs as set forth in said sixth paragraph of plaintiffs' bill of complaint, or at all.

VII.

Defendant admits that on the 22nd day of September, 1896, it filed in the United States land office at the city of Spokane in the State of Washington an application for a patent for the said Mountain View mining claim, survey No. 351, together with the plat and field-notes of the said Mountain View claim made by and under the direction of a United States deputy mineral surveyor, acting under the order of survey issued by the United States surveyor general for
37 the State of Washington, showing the boundaries of the said Mountain View mining claim; and that it also caused to be posted a copy of the said plat, together with a notice of its application for patent, in a conspicuous place on the land embraced in said plat, and also filed in said land office an affidavit of two persons that said notice was duly posted upon said premises, and filed in said land office a copy of said notice, and that thereafter, on the 1st day of October, 1896, the register of said land office published in the "Northport News," a weekly newspaper published nearest said claim, that said application for patent had been made, said notice being first published on the 1st day of October, 1896, and that said notice was published in said newspaper, once in each week for ten consecutive weeks thereafter.

Defendant denies that on or about the 1st day of July, 1896, or at any other time, while the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris, and O. E. Cox, the alleged grantor of C. W. Vedder, or any of them were the owners of, or in the quiet and exclusive possession of, or entitled to the right of possession of, the said alleged Columbia or Kruger Lode mining claims, or that said defendant wrongfully or at all, without right, entered into or upon the said premises described in the complaint as the said Columbia and Kruger Lode mining claims, or any part thereof, and ousted or ejected the plaintiffs and the said E. O. Cox, or any of them therefrom, or that the defendant wrongfully and without right withholds the possession thereof from the plaintiffs.

Denies that the said plaintiffs or the said O. E. Cox, or any
38 of them, ever were the owners of, or in the quiet or exclusive possession of, or in the possession at all, or entitled to the right of possession, of the said Columbia or Kruger Lode mining claims, or any part thereof.

Denies that the defendant The Mountain View Mining & Milling Company, ever wrongfully or without right entered into or upon the said premises or any part thereof, or ousted or ejected the plaintiffs or the said O. E. Cox therefrom. Or that the defendant has at all times or at any time or does now wrongfully or without right withhold the possession thereof from the plaintiffs.

X.

Denies that the said survey of the Mountain View mining claim by the defendant, or the prosecution of the said application for patent, were made without any right or constitute a cloud upon the title or any title of the said plaintiff's right to the possession of, in or to the said portions of the said alleged Columbia or Kruger Lode claims which greatly embarrasses or damages, or embarrasses or damages at all, any title of the plaintiffs in or to either of the said alleged Columbia or Kruger lodes, or any part thereof, which should by law or equity be removed.

And the defendant, The Mountain View Mining & Milling Company, further answering the complaint of plaintiffs herein in order to procure such an adjudication in this suit as will entitle said defendant to proceed with its application for patent of the United States Government, for said Mountain View Lode mining claim, alleges:

I.

That on the 16th day of October, 1895, the land and premises hereinafter claimed as the Mountain View Lode mining claim were vacant, unoccupied mineral lands of the United States, open to and subject to location as such under the provisions of the laws of the United States relating to the location of mining claims.

II.

That on the said 16th day of October, 1895, Charles N. Collins was a citizen of the United States over the age of twenty-one years and a duly qualified locator of a mining claim upon the public domain of the United States.

That on the said 16th day of October, 1895, the said Charles N. Collins went upon that part of the said public domain and public mineral lands of the United States situated in Stevens county in the State of Washington, on the west side of the Columbia river about three miles southwesterly from the town of Northport and about one mile back from said Columbia river and about four miles north from the Little Dalles on said river, and within that portion of the said Stevens county which was by executive order of the President of the United States, dated August 9th, 1872, set aside as the Colville Indian reservation, and within that portion of the said Colville Indian reservation which was declared restored to the public domain of the United States by an act of Congress of July 1st, 1892, entitled "An act to provide for the opening of a part of the Colville reservation in the State of Washington, and for other purposes;" and the said Charles N. Collins then and there made the discovery of a ledge of mineral bearing rock in place carrying silver, lead and other precious and valuable metals, and after making the said discovery the said Charles N. Collins then and there located a mining claim based upon said discovery and called said mining claim the Mountain View, which is the same mining claim

for which the defendant has applied for patent of the United States, and the title of which is involved in this suit.

That the said Collins, after making said discovery of a ledge upon the Mountain View Lode mining claim so as aforesaid, then and there posted a notice of location at the point of such discovery, describing the ground claimed in said location, the number of feet claimed along said ledge and on each side thereof, together with the name of the claim, the name of the locator and the date of the location; and then and there marked said location upon the ground so that its boundaries could be distinctly traced, by placing at each corner and at the center of each end line of said claim a substantial post more than four inches in diameter and more than four feet high, squared and marked to indicate the position of such post upon said claim.

That thereafter, on the 21st day of October, 1895, the said Collins filed for record in the office of the recorder of said Stevens county what was substantially a copy of the notice location so posted by him as aforesaid upon the Mountain View Lode claim.

That thereafter, to wit, on the 29th day of November, 1895, the said Collins did file in said auditor's office an amended notice of location of the said Mountain View mining claim, for the purpose of more particularly describing the said claim with reference
41 to natural objects and permanent monuments, for the identification of the same.

That on the — day of ——, 1895, said Charles N. Collins, by good and sufficient deed, made, executed and delivered, did convey the said Mountain View mining claim to J. R. Taylor; and on the — day of ——, 1890, the said J. R. Taylor, by good and sufficient deed, did convey the said Mountain View mining claim to The Mountain View Mining & Milling Company, defendant herein, and by virtue of the said location of the Mountain View mining claim by the said Collins as aforesaid, and the mesne conveyances as aforesaid, the defendant, The Mountain View Mining & Milling Company, is now, and through its grantors and predecessors in interest has been, the owner of and entitled to the possession of the said Mountain View mining lode claim, which said premises are more particularly described as follows, to wit:

Beginning at the corner No. 1, a pine tree five feet long, five inches square, set two feet in ground with mound of earth and stones, inscribed, 1-351; from which northwest corner section 18, township 39 north, range 40, E. W. M., bears south 28 degrees, 58 minutes east 7,519.86 feet; thence north 29 degrees 47 minutes 44 seconds east 1,469.90 feet to corner No. 2, a pine post six feet long, five inches square, set two feet in ground, with mound of earth and stones, inscribed 2-351, from which a prominent peak bears south 78 degrees east; thence north 65 degrees 45 minutes west 411 feet to corner No. 3, a pine post five feet long, four inches square, set eighteen inches in the ground, with mound of earth and
42 stones, and inscribed 3-351; thence south 37 degrees west, 1,500 feet to corner No. 4, a pine post four feet long, five inches square, set two feet in the ground with mound of earth and stones,

and inscribed 4-351; thence south 65 degrees 45 minutes east 600 feet to corner No. 1, place of beginning—being a survey of the exterior boundaries of the Mountain View mining claim. Magnetic variation 22 degrees, 52 minutes east. containing 16.977 acres.

And this defendant alleges that it has performed the requisite amount of labor provided to be performed upon said Mountain View mining claim under the laws of the United States to entitle it to receive a patent of the United States therefor, and has made its application for patent therefor in due form and done such acts in connection with said application for patent as entitle it to enter the land therein contained and receive said patent upon the determination of this suit in its favor by this honorable court.

Wherefore it, the said defendant, prays judgment of this court:

1. That the plaintiffs have no right to maintain this action.

2. That the plaintiffs have no right, title or interest in or to the said mining premises and ground in controversy, called and applied for as the Mountain View Lode mining claim.

3. That the defendant, The Mountain View Mining & Milling Company, be decreed to be the owner and entitled to the possession of the land and premises herein described as the Mountain View Lode mining claim, and to every part thereof.

43 4. That the defendant may have such other and further relief as to a court of equity may seem meet and proper in the premises.

5. And that the defendant may have its costs and disbursements herein.

THE MOUNTAIN VIEW MINING & MILLING COMPANY,

[SEAL.] By J. R. TAYLOR, *President.*

W. B. HEYBURN,

Of Counsel for Defendant.

STATE OF WASHINGTON, } ss:
County of Spokane, }

J. R. Taylor makes solemn oath and says: I am president of The Mountain View Mining & Milling Company, the defendant named in the above and within answer; that the seal affixed to the said answer is the corporate seal of the said company and was affixed thereto by authority of the said company; that I signed the said answer as president by like authority; that I have read the said answer and know the contents thereof, and that the matters therein stated as of my own knowledge are true, and, as to other matters therein stated upon the information of others, I believe to be true.

J. R. TAYLOR.

Subscribed and sworn to before me this 14th day of January, 1897.

J. W. BINKLEY,

[SEAL.] *Notary Public in and for the State of Washington, Residing at Spokane, in Spokane County, Washington.*

(Endorsed:) No. 511. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling Co., defendants. In equity. Answer. Original. W. B. Heyburn, attorney for defendant. Filed Jan. 14, 1897. In the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

In the United States Circuit Court in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHAS. W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendants.

Plea of Defendant.

The plea of The Mountain View Mining and Milling Company, the above-named defendant, to paragraph 8 of complaint of the above-named plaintiffs.

The defendant, The Mountain View Mining & Milling Company, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint mentioned to be true, in such manner and form as the same are therein set forth and alleged, does plead thereto, and for plea does say:

That as to such of the said parts of the said plaintiff's bill as *is* contained in paragraph eight thereof, that this suit is brought under the provisions of section 2326 of the Revised Statutes of the United States, in support of an adverse claim filed in the United States land office on the 28th day of November, 1896, by the plaintiffs against the application for patent to the Mountain View mining claim, made by the defendant in the United States land office at Spokane, Washington, under the provisions of section 2326 of the Revised Statutes of the United States, this defendant for plea thereto says:

That on September 22nd, 1896, the defendant, The Mountain View Mining & Milling Company, filed in the United States land office at Spokane, Washington, its application for patent for the Mountain View mining claim, situated in Stevens county, in the State of Washington. That notice of said application for patent was duly posted in said land office and advertised ten consecutive weeks. That on the 28th day of November, 1896, the plaintiffs presented to the United States land office a protest and map claiming that the said application conflicted with the Columbia or (and) with the Kruger Lode mining claim claimed by the plaintiffs. That said map and protest were offered as an adverse claim to the said application for patent. That said map was certified to by E. P. Harrison, surveyor, there being nothing to show on said map or in said certificate that the said Harrison was a deputy mineral sur-

veyor of the United States, at the time of making the said survey of the said claims; and the claimants also failed to offer with said map and protest a certified copy of the location notice of the Columbia or the Kruger Lode claims, whereupon the said ad-
46 verse claim, including the said map, were rejected by the said United States land office as insufficient to constitute an adverse claim under the laws of the United States relative to adverse claims, and the said United States land office refused to file the same.

That the allegation contained in the eighth paragraph of the plaintiff's bill of complaint, that on the 28th day of November, 1896, and within the sixty days' period of publication of the said notice of the application for patent the plaintiff duly filed with the register and receiver of the United States land office at the city of Spokane, in the State of Washington, their protest and adverse claim against the said application for patent to the Mountain View mining claim, which said protest and adverse claim set forth the nature, boundary and extent of their said adverse claims or claim as required by law, is untrue in fact.

That there is no adverse claim on file in the said United States land office against the application for patent of the defendant for the Mountain View mining claim, upon which to base this action.

W. B. HEYBURN,
Solicitor and of Counsel for the Defendant, The Mountain View Mining & Milling Company, No. 303 Hyde Block, Spokane, Washington.

I hereby certify that the foregoing plea is in my opinion well founded in point of law.

W. B. HEYBURN,
Of Counsel for Defendant.

Spokane, Wash., Jan. 13, 1896.

47 STATE OF WASHINGTON, } *ss:*
County of Spokane, }

J. R. Taylor being duly sworn, deposes and says: I am president of the Mountain View Mining & Milling Company, the above-named defendant. The foregoing plea is true in point of fact, and is not interposed for delay.

J. R. TAYLOR.

Attest:
[SEAL.] WM. AITCHISON, *Sec'y.*

Subscribed and sworn to before me this 13th day of January, 1897.

J. W. BINKLEY,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Spokane, in Spokane County, Washington.*

(Endorsed:) No. 511. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFad-

den *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling Co., defendant. Plea of defendant. Original. W. B. Heyburn, attorney for defendant. Filed Jan. 14, 1897. In the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

And afterwards, to wit, on the 15th day of January, 1897, there was duly filed in said court in said cause an affidavit of service in the words and figures following, to wit:

48 In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Affidavit of Service of Defendant's Plea and Answer.

I, T. Harris Bartlett, being first sworn, say that I am a white male citizen of the United States and citizen of the State of Washington, over the age of twenty-one years, and reside at Spokane in said State; that on the 14th day of January, 1897, in behalf of W. B. Heyburn, Esq., of counsel for defendant in the above-entitled suit, I served upon Albert Allen, Esq., of counsel for plaintiffs in said suit, a copy of the defendant's plea and a copy of the defendant's answer filed in said suit in the above-entitled court on the 14th day of January, 1897, which said copies were properly and regularly certified to be such by the clerk of said court, by delivering them to Burton J. Onstine, Esq., an attorney-at-law over the age of twenty-one years, and who was on the said 14th day of January, in
49 the absence of the said Allen from his office at No. 310 Hyde block in the city of Spokane, State of Washington, in charge of said office, and who subsequently, to wit, on the 15th day of January, 1897, told me that the said Allen had received from him the said copies of said plea and said answer.

T. HARRIS BARNETT.

Subscribed and sworn to before me this 15th day of January, 1897.

[SEAL.] F. E. LANGFORD,
Notary Public in and for the State of Washington, Residing at Spokane, in Spokane County, Washington.

(Endorsed:) No. 511. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling Co., defendant. Affidavit of service of plea and answer. W. B. Heyburn, attorney for defendant. Filed Jan. 15, 1897, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

And afterward, to wit, on the 23rd day of January, 1897, there was duly filed in said court in said cause notice of filing papers on removal in the words and figures following, to wit:

50 In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Notice.

To Albert Allen, Esq., and to W. T. Stoll, Esq., attorneys for the plaintiffs in the above-entitled action:

Please take notice that the following-named papers in the above-entitled action have been sent by the clerk of the superior court for Stevens county, State of Washington, to the clerk of the United States circuit court for the district of Washington, eastern division, and filed in said last-named court on the 13th day of January, 1897, to wit:

The original summons and complaint filed in said superior court for Stevens county; petition for removal of cause to the aforesaid United States circuit court; bond on petition for removal, and order approving said bond.

W. B. HEYBURN,
Attorney for Defendant.

51 Service of copy of this paper received this 23 day of January, 1897.

W. T. STOLL,
Attorney for —.

(Endorsed:) No. —. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling Co., defendant. Notice of filing of papers on removal to above court. Original. W. B. Heyburn, attorney for defendant, No. 303 Hyde block, Spokane, Wash. Filed Jan. 23, 1897, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

And afterward, to wit, on the 26th day of January, 1897, there was duly filed in said court in said cause demurrer to plea and motion to remand cause, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

52 *Motion to Remand.*

Come now the plaintiffs and move the court to remand this cause to the superior court of Stevens county, State of Washington, for trial, for the reason that the same has been improperly removed to this court in this, to wit:

It does not appear from the pleadings or the record that this is a case arising under the Constitution or laws of the United States.

ALBERT ALLEN,
WM. T. STOLL,
Solicitors and of Counsel for Plaintiffs.

I, Wm. T. Stoll, one of the solicitors and of counsel for the plaintiffs in the above entitled cause, do hereby certify that the foregoing motion is, in my opinion, well founded in point of law.

WM. T. STOLL,
Solicitor and of Counsel for Plaintiffs.

(Endorsed:) No. 511. In the United States circuit court. W. D. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Co., defendant. Due service of within paper (motion) by receipt of a true copy thereof admitted this 26 day of Jan., 1897. W. B. Heyburn, attorney for defendant. Filed Jan. 26, 1897. A. Reeves Ayres, clerk. James O'Neill, deputy.

53 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Demurrer of Plaintiffs to Plea of Defendant.

These plaintiffs, not confessing all or any of the matters in the plea of the defendant to paragraph eight of the plaintiffs' bill of complaint, filed herein, to be true, as therein set forth, do demur to said plea for that the same does not state such a defense, nor contain any defensive matter, entitling the defendant to any relief thereon against these plaintiffs:

Wherefore, they pray the judgment of the court whether they shall be compelled to further answer said plea.

WM. T. STOLL,
ALBERT ALLEN,
Solicitors and of Counsel for Plaintiffs.

54 I, Wm. T. Stoll, one of the solicitors and of counsel for the plaintiffs above named, do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. T. STOLL,
Solicitors and of Counsel for Plaintiffs.

(Endorsed:) No. 511. In the United States circuit court. W. D. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Co., defendant. Due service of within paper (demurrer) by receipt of a true copy thereof admitted this 26 day of Jan., 1897. W. B. Heyburn, attorney for defendant. Filed Jan. 26, 1897. A. Reeves Ayres, clerk. James O'Neill. W. T. Stoll, Ziegler block, Spokane, Wash., attorneys for —.

And afterwards, to wit, on the 26th day of January, 1897, there was duly filed in said court in said cause a replication in the words and figures following, to wit:

55 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs,
vs.
The Mountain View Mining & Milling Company (a Corporation), Defendant.

Replication to Answer.

Replication of plaintiff- in the above cause to the answer of the defendants.

These repliants saving and reserving all advantage and exceptions to the manifold insufficiencies of said answer, for replication thereto, say: that they will aver and prove their said plea to be true and sufficient and that the said answer is untrue and insufficient.

Wherefore they pray relief as in their bill of complaint.

WM. T. STOLL,
ALBERT ALLEN,
Solicitors and of Counsel for Plaintiffs.

State of Washington, } *ss:*
County of Spokane, }

56 Charles W. Vedder, being first duly sworn, makes oath and says: I am one of the plaintiffs named in the within replication; that I have read said replication and know the contents

thereof and that the matters therein stated are true of my own knowledge.

CHARLES W. VEDDER.

Subscribed and sworn to before me this 26th day of January, 1897.

S. P. DOMER,
Notary Public for Washington,
Residing at Spokane, Wash.

[SEAL.]

(Endorsed:) No. 511. In the United States circuit court. W. D. McFadden *et al.*, plaintiff, *vs.* Mountain View Mining & Milling Co., defendant. Due service of within paper (replication) by receipt of a true copy thereof admitted this 26th day of January, 1897. W. B. Heyburn, attorney for defendant. Filed Jan. 26, 1897. A. Reeves Ayres, clerk, by James O'Neill. W. T. Stoll, Ziegler block, Spokane, Wash., attorney for —.

And afterwards, to wit, on the 16th day of April, 1897, there was duly filed in said court in said cause, a supplemental answer, in the words and figures following, to wit:

57 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Supplemental Answer to Bill of Complaint.

Supplemental answer of The Mountain View Mining and Milling Company, the defendant above named, to the bill of complaint of W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, the above-named plaintiffs.

By leave of court, first had and obtained, the defendant, further answering herein, answers the eighth paragraph of the plaintiff's complaint, and denies that on the 28th day of November, 1896, within the sixty days' period of publication of notice, or at any other time, the plaintiffs duly filed with the register and receiver of the land office at the city of Spokane, in the State of Washington, their protest and adverse claim against the application of the defendant for a patent to the Mountain View Lode mining claim.

Denies that any such protest and adverse claim was filed in the said land office which set forth the nature, boundaries and
58 extent of any adverse claim of the plaintiffs against the application for patent by defendant, as required by law.

Denies that this suit is brought in support of any valid adverse claim filed in said land office by the plaintiffs, or any of them,

against the application for patent made by the defendant, to determine the right of possession of any portion of the said alleged Columbia and Kruger Lode mining claims, alleged to be included within the survey and application for patent for the Mountain View Lode mining claim.

That defendant alleges the truth to be that about the 28th day of November, 1896, the plaintiffs presented, at the United States land office aforesaid, certain papers and plats purporting to be and constitute an adverse claim against the application of the defendant for a patent to the said Mountain View mining claim, but that the said adverse claim and plat did not conform to the legal requirements in the premises, and did not show the nature, boundaries and extent of the adverse claim as required by law, and said adverse claim so presented was rejected by the register and receiver of the United States land office, and filing thereof was refused. That there is not now on file in the said United States land office any protest and adverse claim against the issuance of a patent for the said Mountain View Lode mining claim, as applied for by the defendant.

That the action of the said register and receiver of the said land office has been affirmed by the Commissioner of the General Land Office upon appeal from their said action in refusing to file and allow the said adverse claim.

59 Wherefore defendant prays the judgment of this court, first, as in its original answer.

Second. That the plaintiffs have no right to maintain this action.

Third. That the defendant may have such other and further relief as to a court of equity may seem meet and proper in the premises.

Fourth. That the defendant may have its costs and disbursements herein.

MOUNTAIN VIEW MINING & MILLING COMPANY,
By J. R. TAYLOR, *President.*
W. B. HEYBURN,
Counsel for Defendant.

[SEAL.]

STATE OF WASHINGTON, } *ss:*
County of Spokane, }

J. R. Taylor makes solemn oath and says: I am president of The Mountain View Mining & Milling Company, the defendant named in the above and within supplemental answer; that the seal affixed to the said answer is the corporate seal of the said company and was affixed thereto by authority of the said company; that I signed the said answer as president by like authority; that I have read the said answer and know the contents thereof, and that the matters therein stated as of my own knowledge are true, and, as to other matters therein stated upon the information of others, I believe to be true.

J. R. TAYLOR.

60 Subscribed and sworn to before me this 14th day of April, 1897.

J. W. BINKLEY,

[SEAL.] *Notary Public in and for the State of Washington, Residing at City of Spokane, in Spokane County, Washington.*

(Endorsed:) No. —. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Co., defendant. In equity. Supplemental answer. Filed April 16, 1897. Original. In the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy. W. B. Heyburn, attorney for defendant, 303 Hyde block, Spokane, Wash. Service of a copy of within supplemental answer accepted this 16 day of April, 1897. W. T. Stoll and Albert Allen, solicitors for plaintiff.

And afterwards, to wit, on the 21st day of April, 1897, there was duly filed in said court in said cause, a motion to strike, in the words and figures following, to wit:

61 In the United States Circuit Court in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING — MILLING COMPANY (a Corporation), Defendants.

Motion to Strike Out Plea.

Now come W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris, plaintiffs in the above-entitled action, by their attorneys W. T. Stoll and Albert Allen, and move the court to strike from the files of the court that certain paper filed by the defendant herein on the — day of ——, 1897, and styled the plea of defendant to paragraph eight of the complaint.

This motion is made on the following grounds, to wit:

1. Because this is an action at law and not an action in equity, and the plea is unauthorized.

2. This being an action at law the matter contained in said plea, if proper to be pleaded at all, should be set up in the answer.

62 3. The defendant, having answered the complaint, has waived its right to file or retain a plea to a portion of the complaint.

4. It is incompetent for the defendant to enter a plea to one paragraph of the complaint while answering as to other parts of the complaint.

5. Under the rules of this court matter in abatement must be pleaded in a separate plea or answer in the nature of a plea in

abatement, to which plaintiff may reply or demur, and the issues arising thereon shall be tried before any other defense or counterclaim is pleaded, and the defendant having answered herein its right to such plea is waived.

W. T. STOLL,
ALBERT ALLEN,
Attorneys for Plaintiffs.

(Endorsed:) No. —. In the superior court of Spokane county, Washington. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Company, defendant. Motion. Due service of within motion by receipt of a true copy thereof admitted this 21 day of April, 1897. W. B. Heyburn, attorney for defendant. Filed April 21, 1897. A. Reeves Ayres, clerk, by James O'Neill.

And afterwards, to wit, on Wednesday, the twenty-first day of April, 1897, the same being the fourteenth judicial day of
63 the regular April term of said court—present, the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

In the United Sates Circuit Court in and for the District of Washington, Eastern Division.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs,
vs.
The Mountain View Mining & Milling Company (a Corporation), Defendant.

Order Striking Pleas from File.

The parties to this action having treated the same as a suit in equity, the defendant having filed its answer in equity, together with an equitable plea, and the plaintiffs having moved the court to strike such plea from the files of this court because it is an action at law and the plea therefore unauthorized:

It is now at this time ordered by the court that the plaintiffs' said motion be and the same is hereby granted, and said plea is hereby stricken from the files of this court, because the same
64 is improperly filed herein on account of this being a law case. The defendant excepts and exception allowed.

Done in open court this 21st day of April, 1897.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the U. S. circuit court, district of Washington. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Co., defendant. Order. Due service of within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for —. Ent. Law Bk., page 296. Filed April 21, 1897. A. Reeves Ayres, clerk, by James O'Neill.

And afterward, to wit, on the twenty-second day of April, 1897, there was duly filed in said court in said cause, a reply in the words and figures following, to wit:

65 In the United States Circuit Court in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendants.

Amended Reply to Answer.

Now come plaintiffs in the above-entitled action, by leave of the court first had and obtained for an amended reply to the answer, and say:

I.

To the allegations contained in the third paragraph of subdivision five of defendant's answer, admit that the land and premises now claimed by the defendant as the Mountain View mining claim was within and a part of the Colville Indian reservation at the time of the pretended location thereof by the defendant's grantor, Charles N. Collins, and admit that the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris and one O. E. Cox, grantor of the plaintiff Charles W. Vedder, located the mining claims called the
66 Kruger and Columbia mining claims, on the twentieth day of February, 1896, but deny each and every other affirmative allegation in said third paragraph of said subdivision five of said answer.

II.

They deny each and every allegation, matter, statement, and thing contained in the first paragraph of the defendant's further and affirmative answer.

III.

As to whether Charles N. Collins, the defendant's pretended grantor, was on the sixteenth day of October, 1895, or at any other time, a citizen of the United States, over the age of twenty-one years, or otherwise qualified to locate mining claims upon the public domain of the United States, these plaintiffs deny that they have any knowledge or information thereof sufficient to form a belief; and they deny each and every other allegation, matter, statement, or thing contained in subdivision two of the defendant's further and affirmative answer, except that the lands and premises described in said subdivision two are, and were, at the time of the alleged location thereof by the defendant'- grantor, within the limits of the Colville Indian reservation.

And for reply to the affirmative matter contained in the supplemental answer of the defendant herein, plaintiffs admit:

I.

That on the twenty-eighth day of November, 1896, the plaintiffs presented at the United States land office in Spokane, Wash-
67 ington, papers and plats purporting to be and constituting an adverse claim against the application for a patent by the defendant for the so-called Mountain View mining claim, but deny each and every other allegation, matter, statement, and thing therein contained.

Wherefore, plaintiffs pray as they have heretofore in their complaint prayed.

WM. T. STOLL,
ALBERT ALLEN,
Attorneys for Plaintiffs.

STATE OF WASHINGTON, } ss:
County of Spokane, }

Dave O'Neil, being first duly sworn, on oath states: That he is one of the plaintiffs in the above-entitled cause; that he has heard read the foregoing reply; knows the contents thereof; and that the same is true, as he verily believes.

(X) DAVE O'NEIL.

Subscribed and sworn to before me this twenty-first day of April, 1897.

I. W. BENNETT,
Notary Public in and for the State of Washington,
[SEAL.] *Residing at the City of Spokane, Wash.*

(Endorsed:) No. 511. In the United States circuit court, district of Washington. W. D. McFadden *et al.*, plaintiff-, *vs.* The Mountain View Mining & Milling Co., defendant. Reply. Service of
68 within reply by receipt of a true copy thereof admitted this twenty-second day of April. W. B. Heyburn, attorney for defendant. Filed April 22, 1897. A. Reeves Ayres, clerk. Wm. T. Stoll and Albert Allen, the Rookery, Spokane, Wash., attorneys for plaintiffs.

And afterward, to wit, on the twenty-second day of April, 1897, there was duly filed in said court in said cause, a bill of exceptions, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY, Defendant.

Bill of Exceptions.

Be it known that on the twenty-first day of April, 1897, the plaintiffs' motion, in the above-entitled cause, to strike from the files of the court the defendant's plea to paragraph eight of
69 the complaint, came on to be heard and the court granted said motion and ordered said plea stricken from the files, to which the defendant then and there excepted, which exception was duly allowed by the court, and this the defendant's bill of exceptions settled and sealed.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining Co., defendant. Bill of exceptions. Filed May 3, 1897. A. Reeves Ayres, clerk, by James O'Neill, deputy. W. B. Heyburn, attorney for defendant, 303 Hyde block, Spokane, Wash. Ent. L. R. B., page 298.

And afterward, to wit, on the seventeenth day of September, 1897, there was duly filed in said court in said cause, a stipulation of facts and exhibits, in the words and figures following, to wit:

70 In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Stipulation as to Facts.

Come now the plaintiffs and defendant, and expressly waiving a jury herein, hereby stipulate that the following shall be and are the agreed facts in this cause, and that the same shall be taken for all purposes as the findings of fact of the court herein:

1st. That the plaintiffs, O. E. Cox, the grantor of the plaintiff Charles W. Vedder, and Charles N. Collins, the grantor of the defendant, were at all times mentioned in the pleadings and now are citizens of the United States over the age of twenty-one years.

2nd. That the defendant now is and at all times mentioned in

the pleadings herein has been a corporation duly organized, created and existing under and by virtue of the laws of the State of Washington.

71 3rd. That on the sixteenth day of October, 1895, one Charles N. Collins went upon the premises in the north half of the Colville Indian reservation, in the county of Stevens and State of Washington, claiming the same to be public lands of the United States, situated on the west side of the Columbia river about three miles southwesterly from the town of Northport and about one mile back from said Columbia river and about four miles north from the Little Dalles on said river; and the said Collins then and there made a discovery of a ledge of mineral-bearing rock in place carrying silver, lead and other precious and valuable metals, and after making the said discovery the said Collins then and there pretended to locate a mining claim based upon said discovery, and called said mining claim the Mountain View, which is the same mining claim described in the answer of the defendant herein, and which is correctly delineated upon and described in the map h reto attached, marked Exhibit "A" and made a part hereof; and which is the same mining claim for which the defendant has applied for patent from the United States, and the title of which is involved in this suit. That the said Collins after making said discovery of a ledge upon the Mountain View Lode mining claim so as aforesaid then and there posted a notice of location at the point of such discovery, describing the ground claimed in said location, the number of feet claimed along said ledge and on each side thereof, together with the name of the claim, the name of the locator and the date of the location; and then and there marked said location

72 upon the ground so that its boundaries could be distinctly traced, by placing at each corner and at the center of each end line of said claim a substantial post more than four inches in diameter and more than four feet high, squared and marked to indicate the position of such post upon said claim. That thereafter, and on the twenty-first day of October, 1895, the said Collins filed for record in the office of the recorder of said Stevens county what was substantially a copy of the notice of location so posted by him as aforesaid upon the Mountain View Lode claim. That thereafter, to wit, on the twenty-ninth day of November, 1895, the said Collins did file in said auditor's office an amended notice of location of the said Mountain View mining claim for the purpose of more particularly describing the said claim with reference to natural objects and permanent monuments, for the identification of the same. That defendant herein has succeeded by due and regular conveyance to whatever right, title and interest said Collins acquired under and by virtue of such location. That defendant has performed upon said claim the amount of labor required by the laws of the United States.

4th. That thereafter and on Feb. 20, 1896, the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris and one O. E. Cox, the grantor in interest of the plaintiff Charles W. Vedder, entered upon the north half of the Colville Indian reservation, in the county of

Stevens and State of Washington, claiming the same to be public lands of the United States, and then and there discovered therein
a vein or lode of rock in place bearing gold, silver and other
73 precious metals, and then and there pretended to locate a
mineral claim thereon, called by them the Columbia Lode mining claim, claiming fifteen hundred feet in length along said lode so discovered, and three hundred feet in width on each side of the center of said vein or lode at the surface throughout the length of said claim, and which said claim is more particularly described as follows, to wit: that certain lode mining claim known as and called the Columbia Lode mining claim, situated on the north side of and about one and one-quarter miles from the Columbia river, and about two and one-half miles west of the town of Northport, in the county of Stevens, State of Washington, and being the same ground and premises sometimes called the Gray Eagle lode. That thereupon the said locators posted a notice of location upon said claim, at the point of discovery thereof, and described said location and marked said location upon the ground so that the boundaries thereof could be readily traced; that thereafter, on February 20, 1896, said locators duly filed and caused to be recorded in the office of the county auditor of said county of Stevens a notice of location of said Columbia Lode mining claim, containing the names of said locators, the date of location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as to identify the same, and that said locators in all other respects complied with the laws of the United States and the laws of the State of Washington, and the local rules and customs of the miners of the district in which said claim was situated, governing the
location and manner of recording mineral claims. That the
74 plaintiff Charles W. Vedder has succeeded by regular conveyance to the right, title and interest of the said O. E. Cox in said claim, and that the plaintiffs are at this time invested with such title to said claim as said locators acquired by virtue of such location. That the plaintiffs have complied with the laws of the United States and of the State, and the local rules and customs of the miners of said district relative to the said district for holding and working of mining claims on the public lands of the United States.

5th. That on the said 20th day of February, 1897, the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris and one O. E. Cox, the grantor in interest of plaintiff Charles W. Vedder, entered upon the north half of the Colville Indian reservation, in the county of Stevens, State of Washington, claiming the same to be public lands of the United States, and then and there discovered therein a vein or lode of rock in place bearing gold, silver and other precious metals, and then and there pretended to locate a mineral claim thereon called by them the Kruger Lode mining claim, claiming fifteen hundred feet in length along said vein or lode so discovered and three hundred feet in width on each side of the center of said vein at the surface throughout the length of said claim, and which said claim is more particularly described as follows, to wit: that

certain lode mining claim known as and called the Kruger Lode mining claim, situated on the north side of and about one and one-quarter miles from the Columbia river, and about two and one-half miles west of the town of Northport, in said county
75 of Stevens, State of Washington, and being east of and adjoining the Columbia Lode mining claim herein described, and being the same premises sometimes called the Exchequer Lode mining claim, said claim being fifteen hundred feet in length along the vein and three hundred feet in width on each side of the center of said vein throughout the length of said claim; and then and there posted at the point of discovery of said claim a notice of location thereof, describing said claim, and then and there marked said location on the ground so that the boundaries thereof could be readily traced; and thereafter and on Feb. 20, 1896, the said locators filed and recorded in the office of the county auditor in the said county of Stevens, a notice of location of said Kruger Lode mining claim, containing the names of said locators, the date of said location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as would identify the said claim, and fully complied with the laws of the United States and the State of Washington, and the local rules and customs of the miners of the district in which said claim was located, governing the location of mining claims. That the plaintiff Vedder has succeeded by regular conveyance to the right, title and interest of said Cox in said claim, and that the plaintiffs are at this time invested with such title to said claim as said locators acquired by virtue of such location. That the plaintiffs have complied with the laws of the United States and of the State, and the local rules and customs of the miners of said district relative to holding and working mining claims on the public lands of the United States.
76 6th. That the map hereto attached, marked Exhibit "A," and made a part hereof, correctly shows the said several mining claims and the relation the same bear to each other, together with the areas in conflict.

7th. That on the — day of ——, 1896, the defendant caused the said Mountain View mining claim to be officially surveyed for patent, being United States official survey No. 351, and that the same as surveyed overlapped and included so much of the Columbia or Gray Eagle claim, claimed by plaintiffs, as is shown on the map hereto attached and marked Exhibit "A," and denominated and described thereon as "Area in conflict," and containing 8.79 acres; that said survey also overlapped and included so much of the Kruger or Exchequer mining claim and claimed by plaintiffs as is shown on said map, denominated and described thereon as "Area in conflict" and containing 4.42 acres, a correct description of which areas in conflict is contained in the complaint herein. That thereafter and on the twentieth day of September, 1896, defendant filed in the United States land office in the city of Spokane, application for patent for said alleged Mountain View mining claim, survey No. 351, which together with the plat and field-notes of said alleged Mountain View mining claim, made by or under the direction of the United States surveyor general, showing the boundaries

of the said alleged Mountain View mining claim, and also posted a copy of said plat, together with a notice of such application for patent in a conspicuous place on the land embraced in said
77 plat, and also filed in said land office an affidavit of two persons that said notice was duly posted upon said premises, and filed in said land office a copy of such notice; and that thereafter, and on the first day of October, 1896, the register of said land office published in the "Northport News," a weekly paper published nearest said claim, a notice that said application for patent had been made, which said notice was first published on the 1st day of October, 1896, and was thereafter published once in each week for ten consecutive weeks.

8th. That on the twenty-sixth day of November, 1896, and within the sixty days' period of publication of said notice, these plaintiffs duly filed with the register and receiver of said United States land office, at the city of Spokane, their protest and adverse claim against said application for patent to the Mountain View mining claim, which protest and adverse claim was duly signed and verified by the affidavits of these plaintiffs, protestants therein, and which said protest and adverse claim duly set forth the nature, boundaries and extent of their said adverse claim, as required by law.

9th. That these plaintiffs within thirty days after filing the said protest and adverse claim as aforesaid, instituted this suit in the superior court of the State of Washington in and for Stevens county in aid of said adverse claim and to determine the right of possession to said portions of said Columbia and Kruger mining claims so as aforesaid in conflict herein, which said suit was thereafter duly removed to this court.

78 10th. Either of the parties to this suit may introduce such other or further affirmative testimony in support of their title or right to the premises in controversy as they deem necessary; but neither shall have the right to deny any of the specific facts herein stipulated.

11th. This stipulation is intended to admit the validity of the location of the said Mountain View claim in all respects, if at the time the same was located the lands embraced therein were subject to location as a mineral claim; and it is also intended to admit the validity of the locations of the plaintiffs' mineral claims, the Columbia or Gray Eagle and Kruger or Exchequer, in all respects, if the court determines that at the date of the location thereof the lands on which the same are situated were vacant and subject to location as mineral claims, defendant's pretended mineral claim being prior in point of time.

Dated at Spokane, Washington, September 15, 1897.

W. T. STOLL,
Attorney for Plaintiffs.
W. B. HEYBURN,
Attorney for Defendant.

DAVE O'NEIL,
W. D. McFADDEN,
W. E. HARRIS,
C. W. VEDDER, *Plaintiffs.*

(Endorsed:) No. —. In the circuit court, district of Washington, eastern division. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Company, defendant. Stipulated facts.
79 Due service of within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for —. Filed Sept. 17, 1897. A. Reeves Ayres, clerk, by James O'Neill, deputy. Stoll & Macdonald, the Rookery, Spokane, Wash., attorney- for —.

(Here follows map marked p. 80.)

80 "EXHIBIT A."

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, A. Reeves Ayres, clerk of the circuit court of the United States for the ninth judicial circuit, district of Washington, do hereby certify the foregoing to be a full, true and correct copy of the map "Exhibit A" as attached to stipulation filed Sept. 17, 1897, in the above-entitled case, as the same appears on file in said court.

Attest my hand and the seal of the said circuit court twenty-sixth day of September, 1898.

[SEAL.] A. REEVES AYRES, *Clerk*,
By JAMES O'NEILL, *Deputy*.

81 And afterwards, to wit: on the twenty-first day of April, 1898, there was duly filed in said court, in said cause, opinion of the court in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Washington, Eastern Division.

W. D. McFADDEN ET AL., Plaintiffs, *vs.* MOUNTAIN VIEW MINING & MILLING COMPANY, Defendant.	Filed April 21, 1898.

Opinion.

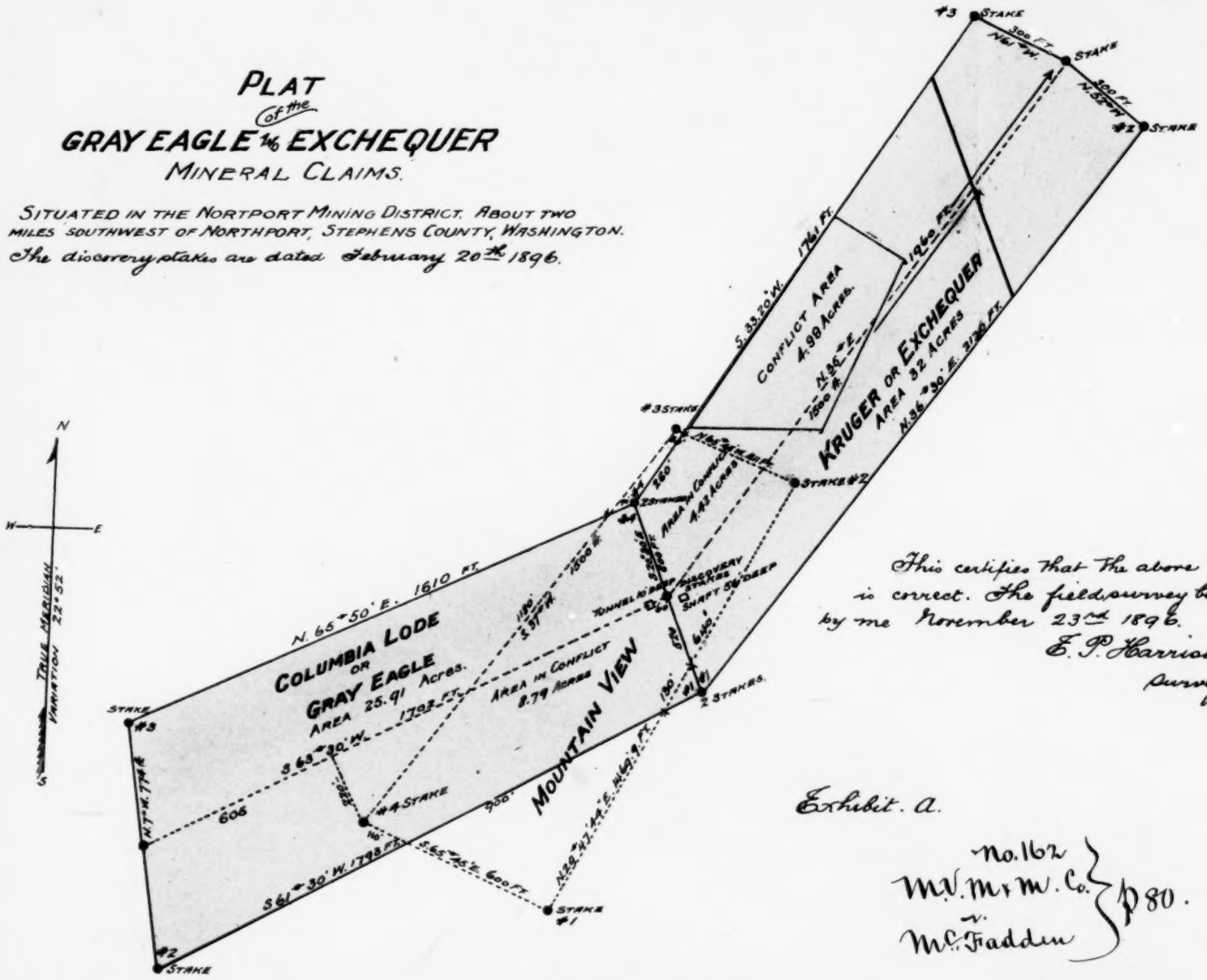
Stoll & McDonald, for plaintiffs.
W. B. Heyburn, for defendant.

HANFORD, *District Judge:*

This action was commenced pursuant to section 2326 Revised Statutes, for the purpose of securing an adjudication of adverse claims to mining ground. A written stipulation setting forth all the material facts has been signed by all the parties and filed. By said stipulation all questions which have been in dispute between the parties are settled, or eliminated from the case, except the question as to the lawfulness of the original location of the vein, or lode claim, called the Mountain View lode, made on the sixteenth day

PLAT
of the
GRAY EAGLE 1/6 EXCHEQUER
MINERAL CLAIMS.

SITUATED IN THE NORTPORT MINING DISTRICT. ABOUT TWO MILES SOUTHWEST OF NORTHPORT, STEPHENS COUNTY, WASHINGTON.
The discovery stakes are dated February 20th 1896.



This certifies that the above plat is correct. The field survey being made by me November 23rd 1896.

E. P. Harrison
Surveyor

Exhibit. a.

No. 162
M.V. M. & M. Co.
v.
Mc. Fadden
$80.

of October, 1895, by Charles N. Collins, grantor of the de-
82 fendant corporation; and the plaintiffs concede that the re-
quirements of the law as to the manner of making a mineral location were in all respects observed by Collins, and he was in every respect qualified to locate and claim mineral lands under the laws of the United States, therefore, said location was lawful if said land was at the date of said location open to exploration by mining prospectors and subject to location under the general laws of the United States. The land is situated within the limits of the tract described in the first section of the act of Congress, passed without approval by the President July 1, 1892, entitled "An act to provide for the opening of a part of the Colville reservation, in the State of Washington, and for other purposes" (27 U. S. Stat., 62). It is the defendant's contention that although said tract was not by said statute placed on the market for sale, nor opened to settlement, it was restored to the public domain and from the date of the act ceased to be a reservation and was brought under the provision of section 2319 Revised Statutes relating to the mineral lands of the United States, which section expressly declares: "All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase by citizens of the United States and those who have declared their intention to become such." The plaintiffs controvert this proposition and they insist that a proclamation by the President, as pro-
vided in said act, is necessary to segregate the tract to be re-
83 stored to the public domain from the reservation, and that
no individual could lawfully initiate a right within the limits of said tract, under any of the general laws relating to the public lands of the United States, at any time prior to the act of Congress, approved Feb. 20, 1896, entitled "An act to extend the mineral land laws of the United States to lands embraced in the north half of the Colville Indian reservation" (29 U. S. Stat., 9).

In the decision of this court in the case of Collins *v.* Bubb, 73 Fed. Rep., 735, the provisions and the history of the act of 1892 are set forth, and an interpretation of the act is given which fully sustains the contention of the defendant in this case. The plaintiffs ask the court to consider the question again, and they argue that the interpretation of the act given in the case cited is contrary to the intention of Congress, as shown by the words of the act and by subsequent legislation, and by the contemporaneous interpretation given by executive officers of the Government.

I have considered the argument with due care and patience, but without discovering any basis for the contention that the words of the act show intention in the legislative mind to enact a law which should lay dormant until at time in the future when the President should put vitality and force into it by an executive proclamation. As I endeavored to show in the decision in the case of Collins *v.* Bubb, the first section provides for two things, viz: Restoration to the body of the public domain of part of the land which by an

executive order had been set apart for an Indian reservation;
84 and, second, the opening to settlement of the part restored.

The act itself, by positive words in the present tense free from ambiguity, accomplishes fully the first object of the law. It is true that the tract described is not restored unconditionally, but the restrictions and conditions are clearly defined, and by the rule, *expressio unius est exclusio alterius*, there can be no additional implied restrictions or conditions. Congress intended to secure to the Indians the right of first choice of such parts of the tract as they are entitled by the provisions of the act to have allotted to them in severalty, and, to avoid all danger of conflicting claims and disputes between them and white settlers, power to fix a date in the future when the tract should be opened to settlement, and entry was vested in the President. It was so provided in order to afford time for the Indian allotments to be made before the first white settlers should be permitted to come upon the tract. There can be no such conflicting claims as to lands containing valuable deposits of mineral, for the reason that such lands are not subject to selection for allotment to Indians. The attorneys for the plaintiffs have cited an instructive opinion by Judge Sanborn, in the case of Hartman *v.* Warren, 76 Fed. Rep., 157, in which words and phrases frequently used in the laws of the United States relating to the public lands, are explained. According to my understanding of the opinion, the court held that the phrase "pre-emption entry" has a particular meaning in land-office practice, and when used in a statute relating to public land it is to be understood in a restrictive sense, rather than comprehensively, as being applicable to all cases in which
85 a particular person may have a right to be preferred to others in the purchase or acquisition of public lands. This agrees with my own views as to the true interpretation of the statutes, as expressed in the case of Collins *v.* Bubb.

In 1896 Congress by two special acts, extended the mineral land laws, so as to apply to the tract which was by the act of 1892 declared to be restored to the public domain, and granted a right of way across said tract to a railway company. The argument from this is that these enactments were unnecessary if the act of 1892 did of itself, *eo instanti*, take the tract out of the reservation and restore it to the public domain, that Congress would not do a vain thing, and therefore it must be presumed that the act of 1892, as construed and understood by Congress, remains ineffective. This is not a necessary inference. The executive branch of the Government having denied the rights of prospectors and miners and railroad builders, Congress may well have considered that a sufficient reason for additional legislation. Certainly the acts do not show a disposition on the part of Congress to acquiesce of the rulings of the Interior Department, but rather a continuity of purpose to remove the barriers in the way of mining operations and the construction of highways, which purpose was first intimated by the act of August 19, 1890 (26 U. S. Stat., 355), providing for a commission to negotiate with the Colville Indians for relinquishment of part of

their reservation, then plainly expressed in the report to the
86 House of Representatives by its Committee on Indian Affairs which preceded the enactment of the law of 1892, and finally persisted in and made emphatic by these two enactments in 1896.

It must be conceded that the construction of the act of 1892 by executive officers of the Government is contrary to the opinion of this court. But with all due deference I must decide according to my own understanding of the law. The opinions of officers of the Interior Department "are entitled to careful consideration and may well be permitted to lead the way to the proper construction of an ambiguous statute, but where the words of an act of Congress are plain and their meaning is clear, they must prevail. Webster *v.* Luther, 16 Sup. Ct., 963-967; U. S. *v.* Tanner, 147 U. S., 661-663; 13 Sup. Ct., 436; Merritt *v.* Comeron, 137 U. S., 542; 11 Sup. Ct., 174; U. S. *v.* Graham, 110 U. S., 219; 3 Sup. Ct., 582; Swift Co. *v.* U. S., 105 U. S., 691." (Hartman *v.* Warren, 76 Fed. Rep., 162.) I am confirmed in the opinion given in Collins *v.* Bubb, and will follow it in this case.

Findings and a judgment may be prepared awarding to the defendant all of the ground included within the lines of the Mountain View Lode claim; and to the plaintiffs only the land within the lines of their several claims, and not included within the defendant's lines. The defendant will also recover costs.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the circuit court of the United States for the district of Washington. W. D. McFadden *et al. vs.*
87 Mountain View Mining & Milling Co. Opinion. Filed April 21, 1898. A. Reeves Ayres, clerk, by —— ——, deputy.

And afterwards, to wit, on the twenty-third day of April, 1898, there *was* duly filed in said court in said cause findings of fact and conclusions of law, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs,
vs.
The Mountain View Mining & Milling Company, Defendant.

Findings of Facts and Conclusions of Law.

Findings of fact.

The above-entitled cause came on regularly to be heard on the seventeenth day of September, A. D. 1897, whereupon the parties plaintiff and defendant, in open court, by a stipulation in writing signed by the parties and filed herein, waived trial by jury, and

presented and filed an agreed statement of the facts of the
88 case, on behalf of the plaintiffs and defendant, and, after argument of counsel for the respective parties, the court took the matter under advisement, and now, on this twenty-third day of April, A. D. 1898, the court finds the facts as stipulated between the parties hereto, and the stipulation on file herein is adopted as the findings of the court. And the court further finds:

I.

That as a matter of fact, the location of the Mountain View Lode mining claim made by Charles N. Collins, on the sixteenth day of October, A. D. 1895, was made upon the vacant and unoccupied public mineral lands of the United States, which were open and subject to the location of mining claims under the provisions of the laws of the United States regulating the location of mining claims.

II.

That since the said sixteenth day of October, 1895, the location of the said Mountain View Lode mining claim has been a valid and existing mining claim, and at the time of the commencement of this action, and the submission of the same at the trial herein, defendant was the owner of the said Mountain View Lode mining claim, and every part thereof.

III.

That at the time of the location of the mining claims called the Columbia, Kruger, Grey Eagle and Exchequer, under which the plaintiffs in this action claim, so much of the land and
89 premises claimed by said locations as was included in the valid location of the Mountain View Lode claim was not subject to location by the plaintiffs, or any other person.

C. H. HANFORD, *Judge.*

Conclusions of Law.

I.

That the defendant has made an application for patent for the Mountain View Lode mining claim, and has taken all of the necessary steps in making such application as are prescribed by law and the rules and regulations of the General Land Office, and is entitled to receive a patent from the United States for the said Mountain View mining claim, and every part thereof.

II.

That the plaintiffs are not entitled to any part of the land premises in controversy, claimed as the Mountain View Lode mining claim.

IV.

That the defendant is entitled to a judgment for the premises in controversy and for its costs of suit.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the circuit court of the United States in and for the district of Washington, eastern division. W. D. McFadden *et al. vs.* The Mountain View Mining & Milling Company. Finding of fact and conclusions of law. Filed April 23, 1898. A. Reeves Ayres, clerk, by James O'Neill, deputy. W. B. Heyburn, attorney for defendant, 303 Hyde block, Spokane, Wash. Ent. L. R. B., page 326.

And afterwards, to wit, on the twenty-third day of April, 1898, there was duly filed and entered in said court in said cause a judgment in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs,

vs.

The Mountain View Mining & Milling Company, Defendant.

Judgment.

This cause having come on regularly for trial before the court, and a jury having been waived by stipulation in writing by the respective parties, which said waiver was filed in the court and the cause having been submitted upon an agreed statement of facts, and the court having found the facts as stipulated, and hereby adopting said stipulated facts as the findings of this court, and the court having heard argument of counsel for the respective parties and being fully advised in the premises—

It is hereby considered and adjudged that the defendant The Mountain View Mining & Milling Company is entitled to the possession of all and singular the land and premises applied for as the Mountain View Lode mining claim, United States survey No. 351, bounded and described as follows, to wit, commencing at corner No. 1 whence the northwest corner of section 18, township 39, north range 40 east, bears south 25 degrees 58 minutes east, 7,519.86 feet; thence running north 29 degrees 47 minutes 44 seconds east, 1,469.90 feet to corner No. 2; thence north 65 degrees 45 minutes west, 411 feet to corner No. 3; thence south 37 degrees west, 1,500 feet to corner No. 4; thence south 65 degrees 45 minutes east, 600 feet to corner No. 1, and place of beginning. Said claim being situated in Stevens county, in the State of Washington. And that the said defendant is entitled to enter the same for patent as applied for.

That the Mountain View Lode mining claim is a valid and existing mining claim, located on the sixteenth day of October, A. D. 1895.

That the defendant have and recover its costs in this action, amounting to the sum of sixty-three and $\frac{75}{100}$ dollars.

Dated this 23rd day of April, A. D. 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the circuit court of the United
92 States in and for the district of Washington, eastern division. W. D. McFadden *vs.* The Mountain View Mining & Milling Co. Judgment. Filed April 23, 1898. A. Reeves Ayres, clerk, by James O'Neill, deputy. W. B. Heyburn, attorney for defendant, 303 Hyde block, Spokane, Wash. Ent. J. R, page 99.

And afterwards, to wit, on the twenty-third day of April, 1898, there *was* duly filed in said court in said cause exceptions, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,

vs.

THE MOUNTAIN VIEW MINING & MILLING COMPANY, Defendant.

Exceptions.

The court having on this twenty-third day of April, 1898, made and entered certain findings of fact, separate and apart from the stipulated facts herein, and having likewise, on said twenty-third day of April, 1898, made and filed herein conclusions of law, and entered a judgment herein, the plaintiffs now at this time except:

93 1. To all of the first of such findings of fact, so made by the court.

2. To all of the second of such findings of fact so made by the court.

3. To all of the third of said findings of facts, so made by the court.

4. To all of the following portion of the first of said conclusions of law, so made by the court, to wit: "And is entitled to receive a patent from the United States for the said Mountain View mining claim, and every part thereof."

5. To all of the second of said conclusions of law, so made by the court.

6. To all of the third (marked IV) of said conclusions of law, so made by the court.

7. To the judgment of the court, made and entered herein in favor of the defendant and against the plaintiffs, and dated this twenty-third day of April, 1898, and to the whole of such judgment.

Dated this twenty-third day of April, 1898.

STOLL, STEPHENS, BUNN & MACDONALD,
ALBERT ALLEN,
Attorneys for the Plaintiffs.

The foregoing exceptions were presented to me on this twenty-third day of April, 1898, and were by me duly allowed.

C. H. HANFORD, *Judge.*

I hereby admit service of a copy of the foregoing exceptions and order of the court allowing the same.

——— ———,
Attorney for the Defendant.

94 STATE OF WASHINGTON, } ss.:
County of Spokane, }

E. T. White, being first duly sworn, on oath states: I am over twenty-one years of age and competent to be a witness in the within-entitled action, and not the plaintiff therein; that at the hour of three o'clock p. m., on the twenty-third day of April, 1898, at the office of W. B. Heyburn, attorney for defendant herein, in the county of Spokane, and State of Washington, I personally served the foregoing exceptions on W. B. Heyburn, attorney for defendant, by delivering to Wm. B. Sams, a law clerk of said W. B. Heyburn, a true copy of said exceptions.

E. T. WHITE.

Subscribed and sworn to before me this twenty-third day of April, 1898.

E. C. MacDONALD,
Notary Public in and for the State of Washington,
[SEAL.] *Residing at Spokane.*

(Endorsed:) No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Company, defendant. Exceptions. Due service of within — by receipt of a true copy thereof admitted this —, day of ———. ——— ———, attorney for —. Filed April 23, 1898. A. Reeves Ayres, clerk, by James O'Neill, deputy. Stoll, Stephens, Bunn & MacDonald, the Rookery, Spokane, Wash., attorneys for plaintiffs.

95 And afterwards, to wit, on the twenty-third day of April, 1898, there *was* duly filed and entered in said court in said cause an order staying proceedings and an order fixing bond, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN ET AL., Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY, Defendant.

Order Staying Proceedings.

In this case the court having ordered a judgment to be entered in favor of the defendant, and the plaintiffs having expressed a desire

to take a writ of error to the court of appeals from the said decision—

Now, on plaintiffs' motion, it is ordered that, for the purpose of enabling the plaintiffs to perfect and procure their writ of error, all proceedings on the judgment in this case be, and the same are hereby, stayed for the period of ten days.

Dated this twenty-third day of April, A. D. 1898.

C. H. HANFORD, *Judge.*

96 (Endorsed:) No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff, *vs.* Mountain View Mining & Milling Company, defendant. Order for stay of proceedings. Due service of within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for —. Filed April 23, 1898. A. Reeves Ayres, clerk. Stoll, Stephens, Bunn & MacDonald, the Rookery, Spokane, Wash., attorneys for plaintiffs. Ent. L. R. B., page 326.

In the United States Circuit Court in and for the District of Washington, Eastern Division.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs,

vs.

The Mountain View Mining & Milling Company, Defendant.

Order Fixing Bond.

On plaintiffs' motion to fix the amount of the supersedeas and cost bond herein, with a view of prosecuting a writ of error,

97 it is ordered by the court that if the plaintiffs desire a stay of execution, they shall be required to furnish a supersedeas bond to the defendant in the sum of two thousand five hundred dollars ($2,500); but if the plaintiffs do not desire a stay of execution, and do not see fit to file such supersedeas bond and still desire to prosecute a writ of error to the circuit court of appeals herein, they shall furnish a bond for the payment of costs to the defendant in the sum of two hundred and fifty dollars.

Done in open court, this twenty-third day of April, 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff, *vs.* Mountain View Mining & Milling Company, defendant. Order. Filed April 23, 1898. A. Reeves Ayres, clerk, by James O'Neill, deputy. Stoll, Stephens, Bunn & MacDonald, the Rookery, Spokane, Wash., attorneys for plaintiffs. Ent. L. R. B., page 325.

And afterwards, to wit, on the twenty-sixth day of April, 1898, there *was* duly filed in said court in said cause a notice and a bill of exceptions, in the words and figures following, to wit:

98 In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Notice of Filing Proposed Bill of Exceptions.

To the defendant in the above-entitled action and to W. B. Heyburn, attorney for the defendant:

Take notice that the plaintiffs have prepared and filed with the clerk of the above-named court their proposed bill of exceptions in the above-entitled cause, a copy of which is herewith served upon you.

Dated this April 26, 1898.

STOLL, STEPHENS, BUNN & MACDONALD,
ALBERT ALLEN,
Attorneys for the Plaintiffs.

(Endorsed:) No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Company, de-
99 fendant. Notice of filing proposed bill of exceptions. Receipt of a true copy thereof admitted this twenty-sixth day of April, 1898. W. B. Heyburn, attorney for defendant. Filed April 26, 1898. A. Reeves Ayres, clerk. Stoll, Stephens, Bunn & MacDonald, the Rookery, Spokane, Wash., attorneys for plaintiffs.

In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Bill of Exceptions.

Be it remembered, that this cause came on regularly to be heard on the seventeenth day of September, 1897; whereupon the parties, plaintiffs and defendant, in open court, by a stipulation in writing, signed by the parties and filed herein, waived trial by jury, and presented and filed an agreed statement of facts in the case on behalf of plaintiffs and defendant, which agreed statement of facts, excepting the title, is in the words and figures as follows, to wit:

100 "Come now the plaintiffs and defendant, and expressly waiving a jury herein, hereby stipulate that the following shall be and are the agreed facts in this cause, and that the same shall be taken for all purposes as the findings of fact of the court herein:

"1st. That the plaintiffs, O. E. Cox, the grantor of the plaintiff Charles W. Vedder, and Charles N. Collins, the grantor of the defendant, were at all times mentioned in the pleadings and now are citizens of the United States, over the age of twenty-one years.

"2nd. That the defendant now is and at all times mentioned in the pleadings herein has been a corporation duly organized, created and existing under and by virtue of the laws of the State of Washington.

"3rd. That on the sixteenth day of October, 1895, one Charles N. Collins went upon the premises in the north half of the Colville Indian reservation, in the county of Stevens and State of Washington, claiming the same to be public lands of the United States, situated on the west side of the Columbia river about three miles southwesterly from the town of Northport and about one mile back from said Columbia river and about four miles north from the Little Dalles on said river; and the said Collins then and there made a discovery of a ledge of mineral-bearing rock in place carrying silver, lead and other precious and valuable metals, and after making the said discovery the said Collins then and there pretended to locate a mining claim based upon said discovery, and called said mining claim the Mountain View, which is the same mining claim

101 described in the answer of the defendant herein, and which is correctly delineated upon and described in the map hereto attached, marked Exhibit 'A,' and made a part hereof, and which is the same mining claim for which the defendant has applied for patent from the United States, and the title of which is involved in this suit. That the said Collins after making said discovery of a ledge upon the Mountain View Lode mining claim so as aforesaid, then and there posted a notice of location at the point of such discovery, describing the ground claimed in said location, the number of feet claimed along said ledge and on each side thereof, together with the name of the claim, the name of the locator and the date of the location; and then and there marked said location upon the ground so that its boundaries could be distinctly traced, by placing at each corner and at the center of each end line of said claim a substantial post more than four inches in diameter and more than four feet high, squared and marked to indicate the position of such post upon said claim. That thereafter and on the twenty-first day of October, 1895, the said Collins filed for record in the office of the recorder of said Stevens county what was substantially a copy of the notice of location so posted by him as aforesaid upon the Mountain View Lode claim. That thereafter, to wit, on the twenty-ninth day of November, 1895, the said Collins did file in said auditor's office an amended notice of location of the said Mountain View mining claim for the purpose of more particularly describing the said claim with reference to natural objects and permanent monu-

ments, for the identification of the same. That defendant
102 herein has succeeded by due and regular conveyance to whatever right, title, and interest said Collins acquired under and by virtue of such location. That defendant has performed upon said claim the amount of labor required by the laws of the United States.

"4th. That thereafter and on Feb. 20, 1896, the plaintiffs, W. D. McFadden, David O'Neil, W. E. Harris, and one O. E. Cox, the grantor in interest of the plaintiff Charles W. Vedder, entered upon the north half of the Colville Indian reservation, in the county of Stevens and State of Washington, claiming the same to be public lands of the United States, and then and there discovered therein a vein or lode of rock in place bearing gold, silver, and other precious metals, and then and there pretended to locate a mineral claim thereon, called by them the Columbia Lode mining claim, claiming fifteen hundred feet in length along said lode so discovered and three hundred feet in width on each side of the center of said vein or lode at the surface throughout the length of said claim and which said claim is more particularly described as follows, to wit: That certain lode mining claim known as and called the Columbia Lode mining claim, situated on the north side of and about one and one-quarter miles from the Columbia river and about two and one-half miles west of the town of Northport in the county of Stevens, State of Washington, and being the same ground and premises sometimes called the Gray Eagle lode. That thereupon the said locators posted a notice of location upon said claim at the point of discovery thereof, and described said location and marked said location upon the ground, so that the boundaries thereof could be readily
103 traced; that thereafter, on Feb. 20, 1896, said locators duly filed and caused to be recorded in the office of the county auditor of said county of Stevens a notice of location of said Columbia Lode mining claim containing the names of said locators, the date of location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as to identify the same, and that said locators in all other respects complied with the laws of the United States and the laws of the State of Washington, and the local rules and customs of the miners of the district in which said claim was situated, governing the location and manner of recording mineral claims. That the plaintiff Charles W. Vedder has succeeded by regular conveyance to the right, title, and interest of the said O. E. Cox in said claim, and that the plaintiffs are at this time invested with such title to said claim as said locators acquired by virtue of such location. That the plaintiffs have complied with the laws of the United States and of the said State, and the local rules and customs of the miners of said district relative to the said district for holding and working of mining claims on the public lands of the United States.

"5th. That on the said twentieth day of February, 1897, the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris, and one O. E. Cox, the grantor in interest of plaintiff Charles W. Vedder, entered upon the north half of the Colville Indian reservation, in the county of

Stevens, State of Washington, claiming the same to be public lands of the United States, and then and there discovered therein a vein or lode of rock in place bearing gold, silver, and other precious
104 metals, and then and there pretended to locate a mineral claim thereon called by them the Kruger Lode mining claim, claiming fifteen hundred feet in length along said vein or lode so discovered and three hundred feet in width on each side of the center of said vein at the surface throughout the length of said claim, and which said claim is more particularly described as follows, to wit: That certain lode mining claim known as and called the Kruger Lode mining claim, situated on the north side of and about one and one-quarter miles from the Columbia river, and about two and one-half miles west of the town of Northport, in said county of Stevens, State of Washington, and being east of and adjoining the Columbia Lode mining claim herein described, and being the same premises sometimes called the Exchequer Lode mining claim, said claim being fifteen hundred feet in length along the vein and three hundred feet in width on each side of the center of said vein throughout the length of said claim. And then and there posted at the point of discovery of said claim a notice of location thereof, describing said claim, and then and there marked said location on the ground so that the boundaries thereof could be readily traced; and thereafter and on Feb. 20, 1896, the said locators filed and recorded in the office of the county auditor in the said county of Stevens, a notice of location of said Kruger Lode mining claim, containing the names of said locators, the date of said location, and such a description of the claim so located, by reference to natural objects and permanent monuments, as would identify the said claim, and fully complied with the laws of the United States and the State of Washington, and the local rules and customs of the miners
105 of the district in which said claim was located, governing the location of mining claims. That the plaintiff Vedder has succeeded by regular conveyance to the right, title, and interest of said Cox in said claim, and that the plaintiffs are at this time invested with such title to said claim as said locators acquired by virtue of such location. That the plaintiffs have complied with the laws of the United States and of the said State and the local rules and customs of the miners of said district relative to holding and working mining claims on the public lands of the United States.

"6th. That the map hereto attached marked Exhibit 'A,' and made a part hereof, correctly shows the said several mining claims and the relation the same bear to each other, together with the areas in conflict.

"7th. That on the — day of ——, 1896, the defendant caused the said Mountain View mining claim to be officially surveyed for patent, being United States official survey No. 351, and that the same as surveyed overlapped and included so much of the Columbia or Gray Eagle claim, claimed by plaintiffs, as is shown on the map hereto attached and marked 'Exhibit A,' and denominated and de-

scribed thereon as 'area in conflict,' and containing 8.79 acres; that said survey also overlapped and included so much of the Kruger or Exchequer mining claim and claimed by plaintiffs as is shown on said map, denominated and described thereon as 'area in conflict' and containing 4.42 acres, a correct description of which areas in conflict is contained in the complaint herein. That there-
106 after and on the twentiesh day of September, 1896, defendant filed in the United States land office in the city of Spokane, application for patent for said alleged Mountain View mining claim, survey No. 351, which together with the plat and field-notes of said alleged Mountain View mining claim, made by or under the direction of the United States surveyor general, showing the boundaries of the said alleged Mountain View mining claim, and also posted a copy of said plat, together with a notice of such application for patent in a conspicuous place on the land embraced in said plat, and also filed in said land office an affidavit of two persons that said notice was duly posted upon said premises, and filed in said land office a copy of such notice; and that thereafter and on the first day of October, 1896, the register of said land office published in the 'Northport News,' a weekly newspaper published nearest said claim, a notice that said application for patent had been made, which said notice was first published on the first day of October, 1896, and was thereafter published once in each week for ten consecutive weeks.

"8th. That on the twenty-sixth day of November, 1896, and within the sixty days' period of publication of said notice these plaintiffs duly filed with the register and receiver of said United States land office, at the city of Spokane, their protest and adverse claim against said application for patent to the Mountain View mining claim, which protest and adverse claim was duly signed and verified by the affidavits of these plaintiffs, protestants therein, and which said protest and adverse claim duly set forth the nature, boundaries and extent of their said adverse claim, as required by law.

107 "9th. That these plaintiffs within thirty days after filing the said protest and adverse claim as aforesaid instituted this suit in the superior court of the State of Washington in and for Stevens county in aid of said adverse claim and to determine the right of possession to said portions of said Columbia and Kruger mining claims so as aforesaid in conflict herein; which suit was thereafter duly removed to this court.

"10th. Either of the parties to this suit may introduce such other or further affirmative testimony in support of their title or right to the premises in controversy as they deem necessary; but neither shall have the right to deny any of the specific facts herein stipulated.

"11th. This stipulation is intended to admit the validity of the location of the said Mountain View claim in all respects, if at the time the same was located the lands embraced therein were subject to location as a mineral claim; and it is also intended to admit the validity of the locations of the plaintiffs' mineral claims, the Co-

lumbia or Gray Eagle and Kruger or Exchequer, in all respects, if the court determines that at the date of the location thereof the lands on which the same are situated were vacant and subject to location as mineral claims, defendant's pretended mineral claim being prior in point of time.

108 "Dated at Spokane, Washington, September 15, 1897.

"W. T. STOLL,
"*Attorneys for Plaintiffs.*
"W. B. HEYBURN,
"*Attorney for Defendant.*

"DAVID O'NEIL,
"W. D. McFADDEN,
"W. E. HARRIS,
"C. W. VEDDER,
"*Plaintiffs.*"

Whereupon, after argument of counsel, said cause was submitted to the court for its decision, and the court took the same under advisement.

And be it further remembered, that thereafter, and on the twenty-third day of April, 1898, the court made its findings of fact and conclusions of law herein; which findings of fact and conclusions of law, excepting the title, are in the words and figures as follows:

"*Findings of Fact and Conclusions of Law.*

"Findings of fact.

"The above-entitled cause came on regularly to be heard on the seventeenth day of September, A. D. 1897, whereupon the parties, plaintiff and defendant, in open court, by a stipulation in writing signed by the parties and filed herein, waived trial by jury, and presented and filed an agreed statement of the facts of the case on behalf of the plaintiffs and defendant, and after argument of counsel for the respective parties, the court took the matter under

109 advisement, and now, on this twenty-third day of April, A. D. 1898, the court finds the facts as stipulated between the parties hereto, and the stipulation on file herein is adopted as the findings of the court. And the court further finds:

"I.

"That as a matter of fact, the location of the Mountain View Lode mining claim, made by Charles N. Collins, on the sixteenth day of October, A. D. 1895, was made upon the vacant and unoccupied public mineral lands of the United States, which were open and subject to the location of mining claims under the provisions of the laws of the United States regulating the location of mining claims.

"II.

"That since the said sixteenth day of October, 1895, the location of the said Mountain View Lode mining claim has been a valid

and existing mining claim, and at the time of the commencement of this action, and the submission of the same at the trial herein, defendant was the owner of the said Mountain View Lode mining claim, and every part thereof.

"III.

"That at the time of the location of the mining claims called the Columbia, Kruger, Gray Eagle, and Exchequer under which the plaintiffs in this action claim, so much of the land and premises claimed by said locations as was included in the valid location of the Mountain View Lode claim was not subject to location by the plaintiffs or any other person.

110 "*Conclusions of Law.*

"I.

"That the defendant has made an application for patent for the Mountain View Lode mining claim, and has taken all of the necessary steps in making such application, as are prescribed by law and the rules and regulations of the General Land Office, and is entitled to receive a patent from the United States for the said Mountain View mining claim, and every part thereof.

"II.

"That the plaintiffs are not entitled to any part of the land and premises in controversy, claimed as the Mountain View Lode mining claim.

"IV.

"That the defendant is entitled to a judgment for the premises in controversy and for its costs of suit.

"C. H. HANFORD, *Judge.*"

And the court thereupon ordered judgment to be entered in favor of defendant, which judgment, excepting the title, is as follows, to wit:

"This cause having come on regularly for trial before the court, and a jury having been waived by stipulation in writing by the respective parties, which said waiver was filed in the court, and the cause having been submitted upon an agreed statement of facts, and the court having found the facts as stipulated and hereby adopting said stipulated facts as the findings of this court, and the court having heard argument of counsel for the respective parties and being fully advised in the premises—

111 "It is hereby considered and adjudged, that the defendant The Mountain View Mining & Milling Company is entitled to the possession of all and singular the land and premises applied for as the Mountain View Lode mining claim, United States survey No. 351, bounded and described as follows, to wit: Commencing at corner No. 1, whence the northwest corner of section 18, township 39, north range 40 east, bears south 25 degrees 58 minutes east,

7,519.86 feet; thence running north 29 degrees 47 minutes 44 seconds east, 1,469.90 feet to corner No. 2; thence north 65 degrees 45 minutes west 411 feet to corner No. 3; thence south 37 degrees west, 1,500 feet to corner No. 4; thence south 65 degrees 45 minutes east 600 feet to corner No. 1, and place of beginning. Said claim being situated in Stevens county, in the State of Washington. And that the said defendant is entitled to enter the same for patent as applied for.

"That the Mountain View Lode mining claim is a valid and existing mining claim, located on the sixteenth day of October, A. D. 1895.

"That the defendant have and recover its costs in this action, amounting to the sum of — dollars.

"Dated this twenty-third day of April, A. D. 1898.

"C. H. HANFORD, *Judge.*"

And thereupon, on said twenty-third day of April, 1898, plaintiffs filed their exceptions to the said findings of fact, conclusions of law and judgment, which exceptions, so filed, were, on said twenty-third day of April, 1898, allowed by the court, and which, omitting the title, are in the words and figures following, to wit:

112 "The court having, on this twenty-third day of April, 1898, made and entered certain findings of fact, separate and apart from the stipulated facts herein, and having likewise, on said twenty-third day of April, 1898, made and filed herein conclusions of law, and entered a judgment herein, the plaintiffs now at this time except:

"1. To all the first of such findings of fact so made by the court.

"2. To all of the second of such findings of fact so made by the court.

"3. To all of the third of said findings of fact so made by the court.

"4. To all of the following portion of the first of said conclusions of law so made by the court, to wit: 'And is entitled to receive a patent from the United States for the said Mountain View mining claim, and every part thereof.'

"5. To all of the second of said conclusions of law so made by the court.

"6. To all of the third (marked IV) of said conclusions of law so made by the court.

"7. To the judgment of the court, made and entered herein in favor of the defendant and against the plaintiffs, and dated this twenty-third day of April, 1898, and to the whole of such judgment.

"Dated this twenty-third day of April, 1898.

"STOLL, STEPHENS, BUNN & McDONALD,
"*Attorneys for the Plaintiffs.*"

And which order of the court so allowing the same was in the words and figures, following, to wit:

113 "The foregoing exceptions were presented to me on this twenty-third day of April, 1898, and were by me duly allowed.

"C. H. HANFORD, *Judge.*"

Wherefore, to the end that the errors in law, if any, committed by the court on the trial of this cause may appear, I certify that the foregoing bill of exceptions contains all the evidence on the trial of said cause; and the said bill of exceptions is hereby settled, allowed, signed, sealed and made a record in the cause.

C. H. HANFORD, *Judge.*

Dated this fourth day of May, 1898.

(Endorsed:) No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiff-, *vs.* Mountain View Mining & Milling Company, defendant. Bill of exceptions. Receipt of a true copy thereof admitted this twenty-sixth day of April, 1898. W. B. Heyburn, attorney for defendant. Filed April 26, 1898. A. Reeves Ayres, clerk, by James O'Neill. Stoll, Stephens, Bunn & Macdonald, the Rookery, Spokane, Wash., attorneys for plaintiffs.

And afterwards, to wit, on the twenty-sixth day of September, 1898, there was duly filed in said court in said cause a petition for a writ of error, and assignment of errors, in the words and figures following, to wit:

114 In the Circuit Court of the United States in and for the District of Washington, Eastern Division.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs in Error, *vs.* The Mountain View Mining & Milling Company, (a Corporation), Defendant in Error.	At Law.

Petition for Writ of Error.

And now comes the plaintiffs, W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris, and say, that on or about the twenty-third day of April, 1898, this court entered judgment in favor of the defendant and against the plaintiffs, in which judgment and the proceedings had prior thereto in this cause certain errors were committed in prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, these plaintiffs pray that a writ of error may issue in this behalf to the United States circuit court of appeals, for the ninth circuit, for the correction of errors so complained of, and that a

transcript of the record, proceedings and papers in this cause,
115 duly authenticated, may be sent to the said circuit court of appeals.

STOLL & MACDONALD AND
ALBERT ALLEN,
Attorneys for Plaintiff.

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Co., defendant. Petition for writ of error. Due service of within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for ——. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald, the Rookery, Spokane, Wash., attorneys for ——.

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. At Law.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

116 *Assignment of Errors.*

And now, on the twenty-sixth day of September, 1898, come the said plaintiffs, by Stoll & Macdonald and Albert Allen, their solicitors, and say that the decree in said cause is erroneous and against the just rights of said plaintiffs, for the following reasons:

I.

Because it appears from the stipulated facts in this cause that the location of the Mountain View mining claim made by Charles N. Collins on the sixteenth day of October, 1895, was made upon lands of the United States which at that time were not vacant public lands of the United States and were not subject to the location of mineral claims under the provisions of the laws of the United States regulating the location of mining claims, and the court erred in concluding as a matter of law that the same were vacant lands.

II.

That the location of the Columbia, Kruger, Gray Eagle, and Exchequer lode mining claims made on February 20, 1896, by the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris, and one O. E. Cox, the grantor in interest of the plaintiff Charles W. Vedder, were made upon vacant and unoccupied mineral lands of the United States which were then and there vacant and subject to location of mineral claims under the provisions of the laws of the United States regulating the location of mining claims.

117 III.

Because the stipulated facts show that the plaintiffs, on the twenty-sixth day of November, 1896, and within the sixty days' period of publication of defendant's notice for a patent, duly filed with the register and receiver of the United States land office, at the city of Spokane, their protest and adverse claim against the application for patent to the Mountain View mining claim of defendant, which protest and adverse claim was in strict compliance with law and the rules and regulations of the General Land Office, and the court erred in not so finding.

IV.

That it appears from the stipulated facts in this case that the plaintiffs are entitled to recover a decree against the defendant for for the lands in controversy in this suit, and the refusal of the court to so find as a matter of law was error.

Wherefore, the said plaintiffs pray that the said decree be reversed and that the said court may be directed to enter a decree in accordance with the prayer of the appeal.

STOLL & MACDONALD AND
ALBERT ALLEN,
Solicitors for Plaintiffs.

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *v.* The Mountain View Mining & Milling Co., defendant. Assignment of errors on appeal. Due service of
118 within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for ——. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald, the Rookery, Spokane, Wash., attorneys for ——.

And afterwards, to wit, on the twenty-sixth day of April, 1898, there was duly filed and entered in said court in said cause an order allowing writ of error, and a bond, in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. At Law.

W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Plaintiffs in Error,
vs.
The Mountain View Mining & Milling Company (a Corporation), Defendant in Error.

Order Allowing Writ of Error.

On this twenty-sixth day of September, 1898, came the plaintiffs, by their attorneys, and filed herein and presented to the court
119 their petition praying for the allowance of a writ of error intended to be urged by them, praying that a transcript of

the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States circuit court of appeals for the ninth circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error upon the said plaintiffs giving bond according to law in the sum of two hundred fifty ($250.00) dollars.

C. H. HANFORD, *Judge.*

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Co., defendant. Order allowing writ of error. Due service of within — by receipt of a true copy thereof admitted this — day of ——. —— ——, attorney for ——. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald, the Rookery, Spokane, Wash., attorneys for ——.

120 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. At Law.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs in Error,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant in Error.

Bond on Writ of Error.

Know all men by these presents, that we, W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris, as principals, and Mary B. Rugh and S. S. Glidden, as sureties, are held and firmly bound unto the defendant, The Mountain View Mining & Milling Company, in the full sum of two hundred fifty ($250.00) dollars, to be paid to the said defendant, The Mountain View Mining & Milling Company, its certain attorneys, successors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-sixth day of September, in the year of our Lord eighteen hundred and ninety-eight.

Whereas, lately at a circuit court of the United States for
121 the district of Washington, eastern division, in a suit depending in said court between the said W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, as plaintiffs, and The Mountain View Mining & Milling Company, defendant, a judgment and decree was rendered against the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris, and the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the

aforesaid suit, and a citation directed to the said defendant, The Mountain View Mining & Milling Company, citing and admonishing it to be and appear at a session of the United States circuit court of appeals, for the ninth circuit, to be holden at the city of Seattle, in said circuit, on the second Monday of September next:

Now, the condition of the obove obligation is such that if the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris shall prosecute said writ of error to effect and answer all damages and costs, if they fail to make the said plea good, then the above obligation to be void, else to remain in full force and effect.

W. D. McFADDEN,
By E. C. MACDONALD,
His Attorney.

DAVID O'NEIL,
By E. C. MACDONALD,
His Attorney.

CHARLES W. VEDDER,
By E. C. MACDONALD,
His Attorney.

W. E. HARRIS,
By E. C. MACDONALD,
His Attorney.

(X) MARY B. RUGH.
S. S. GLIDDEN.

122 COUNTY OF SPOKANE, } *ss:*
State of Washington, }

Mary B. Rugh and S. S. Glidden, being duly sworn, each for himself deposes and says that he is a resident of the city and county of Spokane, State of Washington; that he is worth the sum of five hundred dollars in separate property situated within the county of Spokane and State of Washington over and above all his debts and liabilities, and exclusive of property exempt from execution.

(X) MARY B. RUGH.
S. S. GLIDDEN.

Subscribed and sworn to before me this twenty-sixth day of September, A. D. 1898.

SAM'L R. STERN,
Notary Public in and for the State of Washington,
Residing at Spokane.

[SEAL.]

This bond is hereby approved, Sept. 26, 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Co., defendant. Bond on appeal. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald, the Rookery, Spokane, Wash., attorneys for ——.

123 And afterwards, to wit, on the twenty-sixth day of September, 1898, there was duly issued out of said court a writ of error, in the words and figures as follows, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. At Law.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs in Error,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *Ninth Judicial District*, } ss:

The President of the United States to the honorable judges of the circuit court of the United States for the district of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, plaintiffs, and The Mountain View Mining & Milling Company, defendant, a manifest error hath appeared, to the great damage of the said W. D. McFadden,
124 David O'Neil, Charles W. Vedder, and W. E. Harris, as by their complaint appears, we being willing that error, if any hath been, shall be fully corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and the proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ninth circuit, together with this writ, so that you have the same at San Francisco within thirty days from the date of this writ in said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of September, 1898.

A. REEVES AYRES, *Clerk.*

Allowed by—
—— ——, *Judge.*

(Endorsed:) In the circuit court of the United States, district of Washington, eastern division. W. D. McFadden *et al.*, plaintiffs, *v.* The Mountain View Mining & Milling Co., defendant. Writ of error. Service of within writ by receipt of a true copy thereof ad-

mitted this 26th day of September, 1898. W. B. Heyburn,
125 attorney for defendant. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald and Albert Allen, the Rookery, Spokane, Wash., attorneys for plaintiffs.

And afterwards, to wit, on the twenty-sixth day of September, 1898, there was duly issued out of said court a citation in the words and figures as follows, to wit:

Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss*:

To the Mountain View Mining & Milling Company, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Washington, eastern division, wherein W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 26th day
126 of Sept., in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

C. H. HANFORD,

[SEAL.] *U. S. District Judge, Presiding in said Circuit Court.*

Attest: A. REEVES AYRES, *Clerk.*

(Endorsed:) In the United States circuit court of appeals, ninth circuit. W. D. McFadden *et al. vs.* The Mountain View Mining & Milling Co. Citation. Service of a copy of within citation admitted this twenty-sixth day of September, A. D. 1898. W. B. Heyburn, E. M. Heyburn, L. A. Doherty, attorneys for defendant. Filed Sept. 26, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

UNITED STATES OF AMERICA, }
District of Washington, Eastern Division. }

Clerk's Certificate.

I, A. Reeves Ayres, clerk of the circuit court of the United States of America for the eastern division of the district of Washington in the ninth circuit, by virtue of the foregoing writ of error and in

obedience thereto, do hereby certify that the foregoing papers,
127 numbered from one to one hundred and sixteen, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case in which W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris are plaintiffs in error and The Mountain View Mining & Milling Company defendants in error, as the same remains of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of Spokane in the eastern division of Washington, in the ninth circuit, this fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

A. REEVES AYRES, *Clerk*,
[SEAL.] By JAMES O'NEILL, *Deputy*.

And afterwards, to wit, on the twenty-sixth day of September, 1898, there was duly filed in said court in said cause a petition for an appeal and assignment of errors, in the words and figures following, to wit:

128 In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Petition for Appeal.

The above-named plaintiffs, conceiving themselves aggrieved by the decree made and entered on the twenty-third day of April, 1898, in the above-entitled case, do hereby appeal from said order and decree to the United States circuit court of appeals for the ninth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the ninth circuit.

Dated this twenty-sixth day of September, A. D. 1898.

STOLL & MACDONALD AND
ALBERT ALLEN,
Attorneys for Plaintiff.

129 The foregoing claim of appeal is allowed.
Dated September 26th, 1898.

C. H. HANFORD, *Judge*.

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. In equity. W. D.

McFadden *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling Company, defendant. Petition for appeal. Filed Sept. 26, 1896. A. Reeves Ayres, clerk. Stoll & McDonald and Albert Allen, the Rookery, Spokane, Wash., attorneys for plaintiffs.

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs and Appellants,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant and Appellee.

Assignment of Errors on Appeal.

And now, on the twenty-sixth day of September, 1898, come the said plaintiffs, by Stoll & Macdonald and Albert Allen, their
130 solicitors, and say, that the decree in said cause is erroneous and against the just rights of said plaintiffs, for the following reasons:

I.

Because it appears from the stipulated facts in this cause that the location of the Mountain View mining claim made by Charles N. Collins on the sixteenth day of October, 1895, was made upon lands of the United States which at that time were not vacant public lands of the United States, and were not subject to the location of mineral claims under the provisions of the laws of the United States regulating the location of mining claims, and the court erred in concluding as a matter of law that the same were vacant lands.

II.

That the location of the Columbia, Kruger, Gray Eagle, and Exchequer Lode mining claims, made on Feb. 20, 1896, by the plaintiffs W. D. McFadden, David O'Neil, W. E. Harris, and one O. E. Cox, the grantor in interest of the plaintiff Charles W. Vedder, were made upon vacant and unoccupied mineral lands of the United States which were then and there vacant and subject to the location of mineral claims under the provisions of the laws of the United States regulating the location of mining claims.

III.

Because the stipulated facts show that the plaintiffs, on the twenty-sixth day of November, 1896, and within the sixty days' period of publication of defendant's notice for a patent, duly filed with
131 the register and receiver of the United States land office, at the city of Spokane, their protest and adverse claim against the application for the patent to the Mountain View mining claim of defendant, which protest and adverse claim was in strict compliance with law and the rules and regulations of the General Land Office, and the court erred in not so finding.

IV.

That it appears from the stipulated facts in this case that the plaintiffs are entitled to recover a decree against the defendant for the lands in controversy in this suit, and the refusal of the court to so find as a matter of law was error.

Wherefore, the said plaintiffs pray that the said decree be reversed and that the said court may be directed to enter a decree in accordance with the prayer of the appeal.

STOLL & MACDONALD AND
ALBERT ALLEN,
Solicitors for Plaintiffs.

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. In equity. W. D. McFadden *et al.*, plaintiffs, *vs.* The Mountain View Mining & Milling Co., defendant. Assignment of errors on appeal. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald, the Rookery, Spokane, Wash., attorneys for ——.

132 And afterwards, to wit, on the twenty-sixth day of April, 1898, there was duly filed in said court in said cause a bond on appeal in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Washington, Eastern Division. In Equity.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs,
vs.
THE MOUNTAIN VIEW MINING & MILLING COMPANY (a Corporation), Defendant.

Bond on Appeal.

Know all men by these presents that we, W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, as principals, and Mary B. Rugh and S. S. Glidden, as sureties, are held and firmly bound unto the defendant, The Mountain View Mining & Milling Company in the full sum of two hundred and fifty ($250.00) dollars,
133 to be paid to the said defendan The Mountain View Mining & Milling Company, its certain attorneys, successors, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a circuit court of the United States for the district of Washington, eastern division, in a suit depending in said court between the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris as plaintiffs, and The Mountain View

Mining & Milling Company, defendant, a judgment and decree was rendered against the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris, and the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris having appealed therefrom, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said The Mountain View Mining & Milling Company citing and admonishing it to be and appear at a session of the United States circuit court of appeals for the ninth circuit, to be holden at Seattle in said circuit on the second Monday of September next:

Now, the condition of the above obligation is such that if the said W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris shall prosecute said appeal to effect and answer all
134 damages and costs, if they fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

W. D. McFADDEN,
By E. C. MACDONALD, *His Att'y.*
DAVID O'NEIL,
By E. C. MACDONALD, *His Att'y.*
CHARLES W. VEDDER,
By E. C. MACDONALD, *His Att'y.*
W. E. HARRIS,
By E. C. MACDONALD, *His Att'y.*
(X) MARY B. RUGH.
S. S. GLIDDEN.

STATE OF WASHINGTON, } ss:
County of Spokane, }

Mary B. Rugh and S. S. Glidden, being duly sworn, each for himself deposes and says that he is a resident of the city and county of Spokane, State of Washington; that he is worth the sum of five hundred dollars in separate property situated within the county of Spokane and State of Washington over and above all his debts and liabilities, and exclusive of property exempt from execution.

(X) MARY B. RUGH.
S. S. GLIDDEN.

Subscribed and sworn to before me this twenty-sixth day of September, 1898.

SAM'L R. STERN,
Notary Public in and for the State of Washington, Residing at Spokane.
[SEAL.]

135 This bond is hereby approved this twenty-sixth day of September, 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) Original. No. —. In the circuit court of the United States, district of Washington, eastern division. In equity. W. D. McFadden *et al.*, plaintiffs, *vs.* Mountain View Mining & Milling

Company, defendant. Bond on appeal. Filed Sept. 26, 1898. A. Reeves Ayres, clerk. Stoll & Macdonald and Albert Allen, the Rookery, Spokane, Wash., attorneys for plaintiffs.

And afterwards, to wit, on the twenty-sixth day of September, 1898, there was duly issued out of said court a citation in the words and figures as follows, to wit:

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To the Mountain View Mining & Milling Company, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, eastern division, wherein W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris are
136 appellants and you are defendants in error, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 26th day of September, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

C. H. HANFORD,
U. S. District Judge, Presiding in said Circuit Court.

[SEAL.]

Attest: A. REEVES AYRES,
Clerk U. S. Circuit Court.

(Endorsed:) In the United States circuit court of appeals, ninth circuit. W. D. McFadden *et al. vs.* The Mountain View Mining & Milling Co. Citation. Service of a copy of within citation admitted this 26th day of September, A. D. 1898. W. B. Heyburn, E. M. Heyburn, L. A. Doherty, attorneys for defendant. Filed Sept. 26, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by James O'Neill, deputy.

137 UNITED STATES OF AMERICA, }
District of Washington, Eastern Division. }

Clerk's Certificate.

I, A. Reeves Ayres, clerk of the circuit court of the United States of America for the eastern division of the district of Washington, in the ninth circuit, by virtue of the foregoing appeal and in obedience thereto, do hereby certify that the foregoing pages, numbered

from one to one hundred and twenty-six, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of W. D. McFadden, David O'Neil, Charles W. Vedder and W. E. Harris as plaintiffs in error and The Mountain View Mining & Milling Company, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of Spokane, in the eastern division of Washington, in the ninth circuit, this fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

A. REEVES AYRES, *Clerk*,
[SEAL.] By JAMES O'NEILL, *Deputy*.

I hereby certify that the cost of the above record is $38.00, and that same was paid by Messrs. Stoll and Macdonald.

A. REEVES AYRES, *Clerk*,
[SEAL.] By JAMES O'NEILL, *Deputy*.

138 (Endorsed:) No. 482. In the United States circuit court of appeals for the ninth circuit. W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, plaintiffs in error and appellants, *vs.* Mountain View Mining & Milling Company, defendant in error and appellee. In error to and appeal from the United States circuit court for the district of Washington, eastern division. Transcript of record. Filed Oct. 21, 1898. F. D. Monckton, clerk.

139 At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Wednesday, the fifteenth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

W. D. McFADDEN ET AL.
v.
THE MOUNTAIN VIEW MINING & MILLING COMPANY. } No. 482.

By stipulation of counsel, ordered cause and motion to dismiss submitted to the court for consideration and decision on briefs on file.

140 In the United States Circuit Court of Appeals for the Ninth Circuit.

W. D. McFADDEN, Plaintiff in Error and Appellant,
vs.
MOUNTAIN VIEW MINING & MILLING COMPANY, Defendant in Error and Appellee.

No. 482. Filed Sept. 11, 1899.

In error to and appeal from the United States circuit court for the district of Washington, eastern division.

Before Gilbert, Ross, and Morrow, circuit judges.

Opinion.

Ross, circuit judge, delivered the opinion of the court:

This action was commenced in the superior court of the State of Washington for the county of Stevens, for the purpose of securing an adjudication by a court of competent jurisdiction of the adverse claims of the parties to certain mining ground, under and by virtue of the provisions of section 2326 of the Revised Statutes of the United States—the plaintiff in the action claiming under locations thereof made on the 20th day of February, 1896, and the defendant under a location, as the "Mountain View" claim, made on the 16th day of October, 1895.

141 On motion of the defendant, the action was removed into the circuit court of the United States for the district of Washington, eastern division. In that court the respective parties entered into written stipulations, waiving a jury and submitting the case to the court upon an agreed statement of facts, which in express terms eliminated every question from the consideration of the court, except one, viz: whether or not at the time of the location of the Mountain View claim, or at any time prior to the 20th day of February, 1896, that portion of the Colville Indian reservation within which the ground in question is situated, was open to the location of mining claims.

In the court below judgment was given for the defendant to the action.

That court having treated the case as an action at law, the plaintiff in the suit, out of an abundance of caution, not only appealed from the judgment, but also sued out a writ of error. This fact constitutes one of the grounds of the motion made on behalf of the defendant to the suit to dismiss both the appeal and the writ of error.

The other ground of the motion is, that in and by the citations appearing in the record, the appellee and defendant in error is cited to appear, within thirty days from the date of the issuance of the writs, in this court at the city of San Francisco, California, instead of at the city of Seattle, in the State of Washington.

There is no merit in either of these grounds. The latter ground of the motion to dismiss is based upon the third subdivision of rule

36 of this court, providing for the holding of a term of the court in the city of Seattle, in the State of Washington, beginning on the second Monday in September, and also a term each year at the city of Portland, in the State of Oregon, beginning on the third Monday in September, and providing, also, that "all appeals and writs of error from the circuit and district courts for the district of
142 Washington shall be heard at said annual term in the city of Seattle, unless it is stipulated by the parties thereto that they be heard at San Francisco."

The citations were issued on the 26th day of September, 1898, and as no term of the court would be held in Seattle until about one year thereafter, they were made returnable at the city of San Francisco, at which place the next term of the court, after the return day of the writs, would be held.

In view of these facts it may well be doubted whether the citations were not properly made returnable at the city of San Francisco. On the return day of the writs the court was to be in session at that place, and under the rules of the court the parties were permitted to stipulate for the cause being heard there. The defect, if defect at all, was a mere irregularity, which might be and which was in this case, waived by the moving party; for the record shows that not only did its counsel acknowledge service of a copy of each of the citations, and due service of the brief of the plaintiffs in error and appellants, [illegible]ut objection, but on the 12th day of November, 1898, entered into a stipulation in writing with the counsel for the plaintiffs in error and appellants, to the effect that the cause be heard at San Francisco at the then next session of the court, instead of at the city of Seattle.

The office of the citation is to give notice to the opposite party of the removal of the cause to the appellate court.

The Supreme Court in Bigler *v.* Waller, 12 Wall., 142, said: "Notice is required by law, and where none is given, and the failure to comply with the requirement is not waived, the appeal or writ of error must be dismissed, but the defect may be waived in various ways, as, by the consent or appearance or the fraud of the other party. Service of the citation may be made upon the attorney of record of the proper party. Bacon *et al. v.* Hart, 1 Black, 38. Unquestionably, the attorney of record may also waive service, and acknowledge notice on the citation, and in that behalf he
143 represents the party. Grosvenor *v.* Danforth, 16 Mass., 74; Adams *v.* Robison, 1 Pick., 461." Referring to the facts in that case, the court continued: "On the citation in this case is the following endorsement: 'I hereby acknowledge service of the within citation. James Alfred Jones, counsel for defendants in this case in the circuit court of the United States of the district of Virginia.' Viewed in any reasonable light, it seems to the court that the attorney knew that the appeal was allowed by the court, and was prosecuted by the appellant, which is the only purpose intended to be effected by the citation. Having been counsel in the case, the party signing that certificate must have known that the suit had been revived, and that proceeding took place before the final decree was

entered. Such a service would be sufficient beyond all doubt, if there had been no error in the form of the citation, and as that objection is a merely formal one, we are all of the opinion that it must be considered as waived by the circumstantial language of the certificate signed without objection by the attorney of record in the circuit court."

To the same effect is Tripp *v.* Santa Rosa Street Railroad, 144 U. S., 126, 129; Villabolas *v.* United States, 6 How., 81, 90; Goodwin *v.* Fox, 120 U. S., 775.

As there have been conflicting decisions of the courts in respect to the character of the action brought in the court below by the plaintiffs in error and appellants, they, out of abundant caution and to guard against a possible chance of dismissal, brought the case here both by appeal and by writ of error. There was, however, but one action in the court below, and but one cause and one record here. The method pursued was the safe one, and has the sanction of the Supreme Court. Hurst *v.* Hollingsworth, 94 U. S., 111; *idem*, 100 U. S., 100; Plymouth Mining Co. *v.* Amador Canal Co., 118 U. S., 264, 269.

As the record, however, shows that the action was brought under and by virtue of the provisions of section 2326 of the Revised
144 Statutes, for the adjudication of a contest originating in the Land Office of the United States, the same question of jurisdiction that was determined by this court in the case of Shoshone Mining Company *v.* Rutter, 87 Fed., 801, is presented. In that case this court, after full consideration, held, in accordance with the rulings of several of the circuit courts of this circuit, as well as of others, that of such an action, where, as here, the alleged value of the property in controversy is sufficient to answer the statutory requirement in that regard, the Federal courts have full jurisdiction, and, furthermore, that such an action is of an equitable nature. We adhere to that decision, and deny the motions to dismiss.

The merits of the case are, by the agreement of the respective parties, made to turn upon the question whether or not the ground in controversy was subject to location as a mining claim or claims on the 16th day of October, 1895, when it was located as the Mountain View mineral claim by the grantor of the appellees. If the ground was then subject to such location, it is agreed by the respective parties that the judgment of the court below should be affirmed, since it is stipulated that the location under which the appellee claims was made in compliance with the law, if the ground was then subject to be located under the mining laws. If it was not so subject, it is conceded by the respective parties that the judgment of the court below must be reversed, as it is further agreed that, in that event, the locations under which the appellants claim are valid.

By the act of July 4, 1866 (14 Stat., 86), and subsequent acts, Congress provided, among other things, that in all cases lands valuable for minerals shall be reserved from sale, except as otherwise directed by law, and further declared that all valuable mineral deposits in lands belonging to the United States, both surveyed and

unsurveyed, are free and open to exploration and purchase, and the lands in which they are found to occupation and pur-
145 chase by citizens of the United States, and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. Revised Statutes, secs. 2318, 2319.

On the 9th day of April, 1872, an executive order was issued by President Grant, by which was set apart as a reservation for certain specified Indians, and for such other Indians as the Department of the Interior should see fit to locate thereon, a certain scope of country "bounded on the east and south by the Columbia river, on the west by the Okanagon river, and on the north by the British possessions," thereafter known as the Colville Indian reservation.

There can be no doubt of the power of the President to reserve those lands of the United States for the use of the Indians. The effect of that executive order was the same as would have been a treaty with the Indians for the same purpose, and was to exclude all intrusion upon the territory thus reserved by any and every person, other than the Indians for whose benefit the reservation was made, for mining as well as other purposes. Kendall *v.* San Juan Silver Mining Co., 144 U. S., 658, 663.

That reservation stood unrevoked for many years, and it is not pretended that during that time anybody had any right to locate thereon any mining claim, or otherwise acquire any right to any portion thereof from the Government.

On the 19th day of August, 1890, Congress, by an act of that date (26 Stat., 355), authorized the President to appoint a commission composed of three persons, to visit the Colville Indian reservation and negotiate with the Indians for the cession of such portion thereof as they might be willing to dispose of, and directing the commission to report to the Secretary of the Interior, and that officer to report the facts to Congress. In pursuance of that
146 act, the President appointed a commission consisting of three persons, to carry on the proposed negotiations, which commission made its report to the Secretary of the Interior on June 8, 1891, which was transmitted to Congress by the President in a message of date June 6, 1892. The report contains, among other things, this statement:

"That of the portion of the territory ceded, it is estimated that about three hundred thousand acres are suitable for agricultural purposes. The remainder is very valuable for grazing purposes and for the timber thereon. Much of the territory ceded is mountainous, and abounds in rich mineral deposits. The southern portion of said reservation, it being the portion of said reservation not ceded, contains the largest proportion of agricultural lands, and the grazing lands upon this portion are for the most part fine. The supply of timber here is quite ample. From the best information the commission has been able to obtain, it is believed that there is upon the portion of said reservation not ceded, an acreage of land

suitable for agricultural purposes very largely in excess of a hundred and sixty thousand acres, the limitation indicated in department instructions dated October 21, 1891. The commission did not deem it advisable to negotiate with the Indians for the purchase of any greater area of territory than that ceded, and are satisfied that the portion of said reservation not ceded contains ample territory for the comfort, security, support and maintenance of all the Indians upon said reservation in their various avocations of life. From the best information the commission could obtain without incurring the expense of a survey—and this was not practicable owing to the scarcity of funds—there remains of the portion of the Colville reservation not ceded near one million three hundred thousand acres."

The commission negotiated a treaty with the Indians providing for the extinguishment of all of their rights and claims in and to the north half of the reservation in question, which treaty was to become effective upon its approval by Congress. The treaty was submitted to Congress, and also a proposed bill for enactment to carry the treaty into effect. The message, with the report of
147 the commission and agreement, was by the House of Representatives referred to its Committee on Indian Affairs, which reported that the necessity for opening at least a portion of the reservation existed, for these, among other, reasons:

"A lessening of the dimensions of the Colville reservation, the planting of active, prosperous, and well-ordered white communities on every side of the Indians, the building of railroads, the creation of towns and cities, the opening of mines, and the consequent establishment of markets near at hand, etc. Further that the reservation is surrounded on two sides by the Columbia river, on one side by the wilds of British Columbia, and on the other by a portion of Washington that has no outlet by rail, because the reservation itself stands as a barrier to all railroad construction from the east. And as a third reason why the reservation should be opened, that the reservation as it stands today is a great obstacle to the development of the State of Washington and the general progress of the Pacific Northwest. So long as it continues to be the sporting ground of so sparse, thriftless, and irresponsible a population, its lands will remain untilled, and its mines will remain unopened, being more than the Indians need for sustenance and comfort, yielding no revenue to the General Government, and being of no taxable value to the State of which it is an inseparable and essential part. It cuts off communication between the eastern and western portion of the State, and blocks the way to railroads that stand waiting at its boundaries. A railroad company, a local corporation, has constructed a line from the city of Spokane, the metropolis of eastern Washington, to Marcus, a point on the Columbia river, 100 miles distant, at an expense of over two million dollars, and has surveyed an extension through the reservation to the Okanagon country, an extensive region between the Colville reservation and the Cascade mountains, rich in mineral and agricultural products, but wholly without railroad transportation, etc."

The bill upon which this report was made was entitled "An act

to ratify and confirm an agreement with the Indians residing on the Colville reservation, in the State of Washington, with certain modifications and making appropriation for carrying into
148 effect the same." This was House bill No. 7557, introduced in the House and referred to the Committee of the Whole on April 9, 1892.

The bill to carry into effect the proposed treaty with the Indians was not enacted, but Congress did enact, on the 1st day of July, 1892, an act, the proper construction of which must control the disposition of the present case. That act is entitled "An act to provide for the opening of a part of the Colville reservation in the State of Washington, and for other purposes," and by its first section provides:

"That subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville reservation in the State of Washington herein provided for, all the following-described tract or portion of said Colville reservation, namely: Beginning at a point on the eastern boundary line of the Colville Indian reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia river, and running thence west parallel with the forty-ninth parallel of latitude to the western boundary line of the said Colville Indian reservation in the Okanagon river, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the northeast corner of the said Colville Indian reservation, thence south following the eastern boundary of said reservation to the place of beginning, containing by estimation one million five hundred thousand acres, the same being a portion of the Colville Indian reservation created by executive order dated July second, eighteen hundred and seventy-two, be, and is hereby, vacated and restored to the public domain, notwithstanding any executive order or other proceeding whereby the same was set apart as a reservation for any Indians or bands of Indians, and the same shall be open to settlement and entry by the proclamation of the President of the
149 United States, and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington." (27 Stat., 62.)

Section 2 of this act provides for the disposition of the lands to be so opened to settlement, entry, and disposition.

By section 3 it is provided that each entryman under the homestead laws shall, within five years from the date of his original entry, before receiving a final certificate of the land covered by his entry, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and fifty cents per acre, one-third of which shall be paid within two years after the date of the original entry; but that the rights of honorably discharged Union soldiers and sailors, as defined in certain

specified sections of the Revised Statutes, shall not be abridged except as to the sum to be paid as aforesaid.

Section 4 is as follows:

"That each and every Indian now residing upon the portion of the Colville Indian reservation hereby vacated and restored to the public domain, and who is so entitled to reside thereon, shall be entitled to select from said vacated portion eighty acres of land, which shall be allotted to each Indian in severalty. No restrictions as to locality shall be placed upon such selections other than that they shall be so located as to conform to the congressional survey or subdivisions of said tract or country, and any Indian having improvements may have the preference over any other person in and to the tract of land containing such improvements, so far as they are within a legal subdivision not exceeding in area the quantity of land that he or she may be entitled to select and locate. All such allotments shall be made at the cost of the United States, under such rules and regulations as the Secretary of the Interior may from time to time prescribe. Such selections shall be made within six months after the date of the President's proclamation opening the lands hereby vacated to settlement and entry, and after the same have been surveyed, and when such allotments have been selected as
150 aforesaid and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the benefit of the allottees respectively, and afterwards conveyed in fee-simple to the allottees, or their heirs, as provided in the act of Congress entitled 'An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes,' approved February eighth, eighteen hundred and eighty-seven, and an act in amendment and extension thereof, approved February twenty-eight, eighteen hundred and ninety-one, entitled 'An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes:"' Provided, that such allotted lands shall be subject to the laws of eminent domain of the State of Washington, and shall, when conveyed in fee-simple to the allottees or their heirs, be subject to taxation as other property in said State."

By section 5 it is provided that all Indians residing on the lands by the act vacated and restored, shall have the right, if they so prefer, under the direction of the Indian agent, to occupy and reside upon such portions of the Colville Indian reservation not by the act vacated, as are not occupied by or in the possession of any other Indian or Indians.

Section 6 of the act makes provisions for land for school purposes, and also for a site for certain mills, and, after making an appropriation for the purpose of carrying out the provisions of the act, it concludes by declaring in section 8 that nothing contained in the

act shall be considered as recognizing title or ownership by the Indians of any part of the reservation whether restored to the public domain, or still reserved by the Government for their use and occupancy.

On the 20th day of February, 1896, Congress passed an act entitled "An act to extend the mineral land laws of the United
151 States to lands embraced in the north half of the Colville Indian reservation," by which it is declared "that the mineral land laws of the United States be, and are hereby, extended so as to apply to all lands" described in section 1 of the above act of July 1, 1892. (29 Stat., 10.)

On the 6th day of March, 1896, Congress passed an act entitled "An act granting to the Columbia and Red Mountain Railway Company a right of way through the Colville Indian reservation, in the State of Washington, and for other purposes," and providing "that there be, and is hereby, granted to the Columbia and Red Mountain Railway Company, a corporation organized under the laws of the State of Washington, a right of way to the extent of one hundred feet on each side of the center line of said railway across the Colville Indian reservation in the State of Washington, commencing at a point at or near the Little Dalles on the Columbia river, in Stevens county in said State, and running thence in a northerly direction by the most feasible route to the international boundary line between the United States and British Columbia, together with all the rights granted to railroads by the act of Congress entitled 'An act granting to railroads a right of way through the public lands of the United States,' approved March third, eighteen hundred and seventy-five; and for the purposes of this grant, and the construction of said railway, all the provisions of said act are hereby declared to be applicable thereto to the same extent as though the lands in said reservation were open to settlement and sale." (29 Stat., 44.)

The question in the case is whether or not the act of July 1, 1892, in and of itself, operated to restore that portion of the Colville Indian reservation described in its first section, to the mass of public lands so as to admit of the immediate entry thereon by the public and the location of mining claims upon it under the mining laws
of the United States; for it cannot be doubted that if one
152 man was thereby given the right of entry thereon for the purpose of prospecting and locating mining claims, every citizen of the United States, and every person who had declared his intention to become such, was thereby given the same right.

It is undisputed that the officers of the Land Department have uniformly held that the act did not have that effect. Indeed, the Secretary of the Interior, when advised that many persons had gone upon that portion of the reservation for the purpose of making mining locations and entries issued, by direction of the President, a warning to such persons, prohibiting them from going upon the reservation for any purpose in advance of the issuance of the proclamation by the President provided for by the act.

It is said in support of the judgment given below, that where the

words of an act of Congress are plain, and their meaning is clear, they must prevail, notwithstanding they have been otherwise construed by the officers charged with the execution of the law. That is perfectly true; but at the same time the rule is firmly established that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overthrown except for cogent reasons, and unless it be clear that such construction is erroneous. United States *v.* Johnston, 124 U. S., 236, 253; Edwards *v.* Darby, 12 Wheat., 206; United States *v.* Moore, 95 U. S., 760; Hahn *v.* United States, 107 U. S., 402; United States *v.* Philbrick, 120 U. S., 52, 59; Cooper Mfg. Co. *v.* Ferguson, 113 U. S., 727.

Moreover, the legislative construction of its own act is always potent. "If it can be gathered," said the Supreme Court in The United States *v.* Freeman, 44 U. S., 556, 564, "from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legisla-
153 tive declaration of its meaning, and will govern the construction of the first statute." And in the case of the Philadelphia, etc., R. R. Co. *v.* Catawessa R. R. Co., 53 Pa. St., 20, the supreme court of Pennsylvania said: "If a contemporaneous construction by the legislature of the same words can be discovered it is high evidence of the sense intended." That the acts of July 1, 1892, and February 20, 1896, are *in pari materia*, is perfectly plain, for they relate to the same subject-matter, and are parts of the same legislative purpose. In respect to such statutes, Sutherland on Statutory Construction, section 283, says: "All consistent statutes which can stand together, though enacted at different dates, relating to the same subject, and hence briefly called statutes *in pari materia*, are treated prospectively and construed together as though they constituted one act. This is true whether the acts relating to the same subject were passed at different dates, separated by long or short intervals at the same session, or on the same day. They are all to be compared, harmonized, if possible, and if not susceptible to a construction which will make all of their provisions harmonize, they are made to operate together so far as possible consistently with the evident intent of the latest enactment." And in Endlich on the Interpretation of Statutes, at section 43, it is said: "Where there are earlier acts relating to the same subject, the survey must extend to them; for all are, for the purposes of construction, considered as forming one homogen-ous and consistent body of law, and each of which may explain and elucidate every other part of the common system to which it belongs."

That Congress did not intend, by the act of July 1, 1892, to open the portion of the Colville Indian reservation thereby restored to the public domain, to the operation of the mineral laws of the United States in advance of, and without reference to, the proclamation of the President therein provided for, is, we think, quite clearly shown by its act of February 20, 1896, in which, as has been
154 seen, it declared "that the mineral land laws of the United States be, and are hereby, extended so as to apply to all

lands," described in section 1 of the act of July 1, 1892. If, by the act of July 1, 1892, Congress had already brought those lands within the operation of the mineral land laws, there was obviously no need of the act of February 20, 1896, providing, as it did, for precisely the same thing. Idle acts cannot be justly or properly attributed to Congress. To the suggestion that the officers of the Land Department of the Government had uniformly held that the act of July 1, 1892, did not open the portion of the reservation restored to the public domain, to the operation of the mineral laws in advance of the President's proclamation, and that for that reason Congress passed the act of February 20, 1896, the answer is, that there is in the language of the latter act no indication whatever of any intention on the part of Congress to correct the interpretation that had been put by the officers of the Land Department upon its previous act of July 1, 1892. If such had been the intention it could very easily have been expressed, and some expression indicating the intention would very naturally be expected. On the contrary, the language of the act of 1896 is "That the mineral land laws of the United States be, and are hereby, extended so as to apply" to the lands restored to the public domain by the act of July 1, 1892. The words of the act of 1896 that there "be and are hereby extended," etc., are words of present and future operation, and do not manifest any intent on the part of Congress to give to the act in which they appear a retrospective effect, but do clearly indicate that Congress did not consider that the lands in question were already within the operation of the mining laws. Retrospective effect is never given to a law unless the language used, properly construed, plainly manifests such intention. Endlich on Interpretation of Statutes, secs. 291–'4; Potter's Dwarris on Statutes and Constitutions, note pp. 60 and 70. See also United States *v.* Southern Pacific Railroad
155 Company, 146 U. S., 570; St. Paul & Pacific Railroad *v.* Northern Pacific Railroad Co., 139 U. S., 1; Schulenberg *v.* Harrisman, 21 Wall., 44.

Recurring to the act of July 1, 1892, we see no good reason to doubt that it was properly construed by the officers of the Land Department, and by Congress itself, as manifested by its act of February 20, 1896. It is true that by the first section of the act of July 1, 1892, that portion of the Colville Indian reservation therein described was, with certain limitations and exceptions, restored to the public domain; but it must be remembered that all of the public domain is not subject to entry or disposal under the mining or other general laws of the United States. Alaska became a part of the public domain of the United States upon its cession by the Emperor of Russia; but it was not until July 27, 1868, that the laws of the United States relating to customs, commerce and navigation were extended to and over that portion of the public domain (15 Stat., 240), and not until March 17, 1884, that the laws of the United States relating to mining claims, and the rights incident thereto, were made applicable thereto, and then, only subject to certain conditions and provisions prescribed by Congress (23 Stat., 24). Later, a further extension of the general land laws of the United States

were made to Alaska (act of March 3, 1891, 26 Stat., 1095). The public lands of Hawaii, Porto Rico, and other recently acquired territory now constitute a part of the public domain of the United States; but to none of these has Congress yet extended the mining or any of the other general land laws of the United States. All of this is the province, and the exclusive province, of the legislative department of the Government. It does not, therefore, necessarily follow, from the mere fact that certain territory constitutes a part of the public domain, that the mining laws of the United States apply thereto. They do if Congress has so provided, but they do not unless Congress has so provided.

156 Again recurring to the act of July 1, 1892, it is seen that the portion of the Colville Indian reservation thereby restored to the public domain was expressly made subject to the reservations and allotments of lands in severalty to the individual members of the Colville tribe provided for in the act, and the restoration was also accompanied with the express statutory declaration that the portion restored "shall be opened to settlement and entry by the proclamation of the President of the United States, and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington."

From these provisions it is plain, we think, that the "opening" to be effected by the President's proclamation, was as broad as the "disposition" provided for by the same section and clause; that is to say, that the lands authorized by the act to be disposed of under the general laws applicable to the disposition of the public lands were the same lands, and none other, that the President was, by his proclamation, authorized to open to settlement and entry. The general laws applicable to the disposition of the public lands embrace those relating to mining claims, as well as those relating to pre-emption, homestead, and other entries. "The words 'public lands,'" said the Supreme Court in Newhall *v.* Sanger, 92 U. S., 763, "are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." See, also, Barton *v.* Northern Pacific Railroad Co., 145 U. S., 535; Mann *v.* Tacoma Land Co., 153 U. S., 73; Doolan *v.* Carr, 125 U. S., 618.

While it is true that the right to mineral lands is initiated by location, after the proper discovery of mineral thereon, and that such claims may be held and worked without purchase, yet the law authorizing their exploration also provides for their location, entry, and purchase. (Rev. Stat., secs. 2319–2350.) It necessarily follows

157 that any of the lands of the United States that are, by its general laws, open to exploration for minerals, are likewise open to location, entry, and purchase as such, if they be mineral in character and mineral be discovered therein. Hence it cannot be true, we think, that the portion of the Colville reservation restored to the public domain by the act of July 1, 1892, was any more open to the public in the exploration of minerals and the location of mining claims thereon, in advance of the proclamation of the President therein provided for, than it was to any other kind of entry, or settlement, or disposition. Such exploration, if generally carried on,

might, and very probably would, have resulted in numerous locations, very likely interfering with the allotments to the Indians provided for by the act, and subject to which the restoration was made; to avoid which conflicts was one of the purposes of the provision authorizing the President to provide by proclamation for the opening to settlement, entry, and disposition of the land restored by the act to the public domain. That provision was in harmony with the policy theretofore adopted by Congress in the opening of large bodies of land to disposition under the general laws of the United States, such as the opening of Oklahoma, and the Cherokee strip, whereby a certain date in the future was authorized to be fixed for the opening, and all persons thereby put upon an equal footing. This, we think, was the clear intent of the act of July 1, 1892, as shown by its own provisions. That it was so understood and construed by the officers of the Land Department of the Government is conceded, and that it is the interpretation that Congress itself put upon the act has been shown by its subsequent act of February 20, 1896, and is further shown by its passage of the act of March 6, 1896, by which it granted to the Columbia and Red Mountain Railway Company a right of way one hundred feet in width over the portion of the reservation in question described in section 1 of the act of July 1, 1892, which would have been an entirely useless piece of legislation if that land had been by that act, irrespective
158 of the proclamation of the President, restored to the mass of public lands for all purposes except pre-emption, settlement, homestead, and other like entries; for, in respect to the public lands subject to disposal under general laws, the act of March 3d, 1875, entitled "An act granting railroads a right of way over the public lands of the United States," applies, and there was no need of any other law for that purpose.

The judgment is reversed, and the cause remanded to the court below for further proceedings in conformity with this opinion.

(Endorsed:) Filed September 11, 1899. F. D. Monckton, clerk.

Dissenting Opinion.

GILBERT, *Circuit Judge*, dissenting:

I am of the opinion that the circuit court had no jurisdiction of this cause, for the reasons which were expressed in the dissenting opinion in the case of Shoshone Mining Company v. Rutter *et al.*, 87 Fed., 801.

(Endorsed:) Dissenting opinion. Filed October 23, 1899. F. D. Monckton, clerk.

159 United States Circuit Court of Appeals for the Ninth Circuit, October Term, 1898.

W. D. McFADDEN, DAVID O'NEILL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs in Error and Appellants,
vs.
MOUNTAIN VIEW MINING AND MILLING COMPANY, Defendant in Error and Appellee. } No. 482.

In error to and appeal from the circuit court of the United States for the district of Washington, eastern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, eastern division, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and the cause is remanded to said circuit court for further proceedings in conformity with the opinion of this court.

(Endorsed:) Judgment. Filed September 11, 1899. F. D. Monckton, clerk.

160 In the United States Circuit Court of Appeals for the Ninth Circuit.

MOUNTAIN VIEW MINING & MILLING COMPANY, a Corporation, Appellant,
vs.
W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Appellees. } No. 482.

Petition for Appeal.

The above-named appellant, The Mountain View Mining and Milling Company, conceiving itself aggrieved by the decree made and entered on the 11th day of September, 1899, in the above-entitled cause, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

W. B. HEYBURN,
Solicitor for Appellant.

Dated this 7th day of October, A. D. 1899.

The foregoing claim of appeal is allowed.

WILLIAM B. GILBERT,
United States Circuit Judge.

Dated this 7th day of October, A. D. 1899.

(Endorsed:) Petition for appeal to Supreme Court U. S. and order allowing same. Filed Oct. 16, 1899. Frank D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

161 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

MOUNTAIN VIEW MINING AND MILLING COMPANY, a Corporation, Appellant,
vs.
W. D. MCFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Appellees.
No. 482.

Assignments of Error.

Now, on this 7th day of October, A. D. 1899, comes the appellant, The Mountain View Mining and Milling Company, by W. B. Heyburn, its solicitor, and says that the decree in said cause is erroneous and against the just rights of appellant for the following reasons:

I.

That it appears upon the face of the bill that the plaintiffs have an adequate remedy at law.

II.

That the said plaintiffs have not in and by said bill made or stated such a cause as doth or ought to entitle them to any such discovery or relief as is thereby sought or prayed for from or against the defendant.

III.

Because it doth not appear that the action is one arising under the Constitution or laws of the United States.

V.

The decision of the United States circuit court of appeals for the ninth circuit, wherein it holds that the land and premises located and claimed as the Mountain View mining claim was not
162 open to location as a mining claim prior to the 20th day of February, A. D. 1896, and at the time of the location of the said Mountain View mining claim.

VI.

The judgment of the said circuit court of appeals that the location of the Mountain View mining claim was invalid by reason of the fact that the land and premises were within an Indian reservation and not subject to location at the time the same was made by the defendant.

Wherefore appellant prays that said decree be reversed, and that the court may be directed to enter a decree for the appellant.

W. B. HEYBURN,
Solicitor for Appellant.

(Endorsed:) Assignment of errors. Filed October 17th, 1899, *nunc pro tunc* as of October 7, 1899, by order of court. F. D. Monckton, clerk.

163 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

MOUNTAIN VIEW MINING AND MILLING COMPANY, a Corporation, Appellant,
vs.
W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Appellees.
No. 482.

Know all men by these presents that we, The Mountain View Mining and Milling Company, as principal, and The American Surety Company of New York, as sure*ties*, are held *are* firmly bound unto W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris in the full sum of five hundred dollars, to be paid to the said W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of October, A. D. 1899.

Whereas lately, at a United States circuit court of appeals for the ninth circuit, in a suit, depending in said court, between the said W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, appellants, and The Mountain View Mining and Milling Company, respondent, a decree was rendered against the said Mountain View Mining and Milling Company in said case, and the said Mountain View Mining and Milling Company having appealed therefrom and filed a copy thereof in the clerk's office of the
164 said court to reverse the decree in the aforesaid suit, and a citation directed to the said W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, on the 6th of November next:

Now, the condition of the above obligation is such that if the said Mountain View Mining and Milling Company shall prosecute said appeal to effect and answer all damages and costs if it fail to

make the said plea good, then the above obligation to be void; otherwise to remain in full force and effect.

MOUNTAIN VIEW MINING AND MILLING COMPANY, [SEAL.]

[SEAL.] By J. R. TAYLOR, *President.*

Attest: L. A. DOHERTY,
Acting Secretary.

AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]

Attest:
[SEAL.] By M. M. COWLEY,
Resident Vice-President.
By C. S. VOORHEES,
Resident Ass't Secretary.

[Canceled int. rev. stamps.]

Signed, sealed, and delivered in the presence of—
L. S. ROBERTS.

Approved by—
WM. B. GILBERT,
United States Circuit Judge.

STATE OF WASHINGTON, } ss:
County of Spokane, }

M. M. Cowley, being first duly sworn, says: I am the vice-president of the American Surety Company of New York, a corporation, which is surety on the foregoing undertaking; that said corporation is a resident and householder in Spokane county, Washington, and that it is worth the sum of five hundred dollars over
165 and above all its just debts and liabilities, exclusive of property exempt from execution.

I further say that said corporation is by its articles of incorporation authorized and empowered to sign and execute such undertakings as the foregoing, and that said corporation has fully complied with the laws of the State of Washington, and is duly licensed to transact a surety business within the State of Washington for the current year.

M. M. COWLEY.

Subscribed and sworn to before me this 3 day of Oct., A. D. 1899.

L. S. ROBERTS,
Notary Public in and for the State of Washington, Residing at Spokane.

(Endorsed:) Bond on appeal to Supreme Court U. S. Filed Oct. 16, 1899. Frank D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

166 United States Circuit Court of Appeals for the Ninth Circuit.

W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harris, Plaintiffs in Error and Appellants,
v.
THE MOUNTAIN VIEW MINING AND MILLING COMPANY, Defendant in Error and Appellee. } No. 482.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing one hundred and sixty-five (165) pages, numbered from one (1) to one hundred and sixty-five (165), inclusive, to be a full, true, and correct copy of the transcript of the record, the order of submission, the opinion, the judgment, the petition for and order allowing appeal to the Supreme Court of the United States, the assignment of errors, and the bond on appeal in the above-entitled cause as the originals thereof remain and appear of record in my office, and that the same together constitute the transcript of record on appeal to the Supreme Court of the United States therein.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 7th day of November, A. D. 1899.

F. D. MONCKTON, *Clerk*,
By MEREDITH SAWYER,
Deputy Clerk.

{Ten-cent U. S. internal-revenue stamp, canceled Nov. 7, '99. F. D. M., by M. S.}

167 In the Supreme Court of the United States.

MOUNTAIN VIEW MINING AND MILLING COMPANY, a Corporation, Appellant,
vs.
W. D. McFADDEN, DAVID O'NEIL, CHARLES W. VEDDER, and W. E. Harros, Appellees.

Citation.

UNITED STATES OF AMERICA, *ss:*

To W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, on the 6th day of November next, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein The Mountain View Mining and Milling Company is appellant and you are respondents, to show cause, if any there be, why the decree made and entered

against said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 7th day of October, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

WILLIAM B. GILBERT,
United States Circuit Judge.

168 UNITED STATES OF AMERICA, } ss:
District of Washington, }

I hereby certify that I served the within citation on William T. Stoll and Ernest C. MacDonald, the attorneys of record for the within-named W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris, on the 11th day of October, 1899, at the city of Spokane, in the county of Spokane and district of Washington, by then and there delivering to the said William T. Stoll and Ernest C. MacDonald, each personally, a true copy of the within citation.

Dated at Spokane, Washington, this 11th day of October, A. D. 1899.

C. W. IDE,
U. S. Marshal,
By GEO. L. IDE, *Deputy.*

169 [Endorsed:] D. No. 482. In the United States Supreme Court. Mountain View Mining & Milling Company, appellant, *vs.* W. D. McFadden, David O'Neil, Charles W. Vedder, and W. E. Harris. Citation. Service of the within citation and receipt of a copy thereof admitted this 11th day of October, 1899. —— ——, solicitor for appellee and respondent in lower court. Filed Oct. 16, 1899. Frank D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

Endorsed on cover: File No., 17,578. U. S. C. C. of appeals, 9th circuit. Term No., 162. The Mountain View Mining and Milling Company, appellant, *vs.* W. D. McFadden, David O'Neil, Charles W. Vedder, & W. E. Harris. Filed December 1st, 1899.

In the Supreme Court of the United States.

MOUNTAIN VIEW MINING & MILLING COMPANY, Appellant,
v.
W. D. MCFADDEN ET AL., Respondents.

No. 162. Stipulation.

It is hereby stipulated that the order of the circuit court of the United States, ninth circuit, for the district of Washington, eastern division, made and entered in the above-entitled cause on the 7th day of April, 1897, overruling the motion of the then plaintiff to remand this cause to the State court because said circuit court did not have jurisdiction, a full, true, and certified copy of which is hereto annexed, marked Exhibit A, and made a part hereof, be, and it is hereby, made a part of the record of this case in this court, and the clerk is hereby authorized to attach the same to and make it a part of the record in this case.

Dated this 5th day of July, 1900.

W. B. HEYBURN,
Solicitors for Appellant, Mountain View Mining & Milling Co.
A. B. BROWNE,
ALEX. BRITTON,
Solicitors for Respondents, W. D. McFadden et al.

EXHIBIT "A."

W. D. MCFADDEN ET AL.
vs.
THE MOUNTAIN VIEW MINING AND MILLING COMPANY.

This cause came up for hearing on motion of plaintiffs' counsel to remand to superior court of Stevens county, State of Washington, and the court, having heard the arguments of counsel and being fully advised in the premises—

It is ordered that said motion be, and the same hereby is, denied.

Wednesday, April 7, 1897.

(Page 535, Clerk's Minute Book.)

UNITED STATES OF AMERICA, *District of Washington,* } ss.

I, A. Reeves Ayres, clerk of the circuit court of the United States for the ninth judicial circuit, district of Washington, do hereby certify the foregoing to be a full, true, and correct copy of the original entry made in clerk's minute book in the foregoing entitled case on Wednesday, April 7th, 1897, on page 535, as the same appears on file and of record in said court.

Attest my hand and the seal of the said circuit court 5th day of July, 1900.

(Seal United States Circuit Court, District of Washington, Eastern Division.)

A. REEVES AYRES, *Clerk*,
By JAMES O'NEILL, *Deputy*.

[Ten-cent U. S. internal-revenue stamp, canceled July —, 1900. J. O'N.]

[Endorsed:] No. —, original. No. —. In the United States circuit court for the district of Washington, eastern division. W. D. McFadden *et al. vs.* Mountain View Mining & Milling Co. Certified copy of motion to remand.

[Endorsed:] File No., 17,578. Supreme Court U. S, October term, 1900. Term No., 162. The Mountain View Mining & Milling Co., app't, *vs.* W. D. McFadden *et al.* Stipulation of counsel and addition to record. Office Supreme Court U. S. Filed Jul- 30, 1900. James H. McKenney, clerk.